



SECRETS OF INDEPENDENT CONTRACTORS

AND HOW TO PROFIT FROM THEM

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INTRO

Employees used to work their entire life for one company. They were loyal to their employer and their employer rewarded them handsomely with great retirement plans, healthcare, a secure job and tons of other economic and personal benefits. Employers hired employees, spent lots of time and money training them, and got lots of value from them for many years. This economic model is vanishing.

Now, people will change employers about 7 times in their career. Defined benefit pension plans are almost extinct. The ones that aren't, like GM¹ or most state pension plans,² will almost certainly default on their obligations. Retirement plans like 401 k's will have little value when most workers go to extract the benefit. Health insurance offered by employers may or may not be very good. Companies with low labor costs are dominating the market and forcing companies with high labor costs to adapt or be gobbled up.

Employees are required to divulge a lot of information to comply with the dizzying array of federal and state regulation of employees. The more this private information is shared with others, like employers, the IRS, regulators, etc. the greater the risk of identity theft, fraud, and

1 http://www.brookings.edu/papers/2009/0529_gm_pensions_elliott.aspx

2 <http://www.reuters.com/article/idUSTRE61H13X20100218>

accidental disclosure. Employees have very little control over their own work, schedule, and how they do their work. There are very few tax advantages to being an employee so employees are unable to structure their lives to optimize their tax liabilities. Some people *like* to be told what to do, other people *need* to be told what to do. There is nothing wrong with that, but I bet you are not one of them.

Not only do employees suffer financially, employers suffer as well. The costs to maintain an employee far exceeds the salary paid to an employee. Those costs might include payroll taxes, benefits, training, office space, and equipment, among others. The regulation of employees, both federal and state, creates huge potential liability for employers who take on an employee including workplace harassment, discrimination or unlawful termination. Just the fact that employers have to deal with that regulation is a tax on their time and energy that might be better spent on making their business better.

INDEPENDENT CONTRACTOR: A BETTER ALTERNATIVE

Working as an independent contractor is an alternative to being an employee that can provide significant benefits to both workers and firms with only a few risks. A firm can be either a company or an individual that hires workers. Most people have heard the common phrase “it’s not how much money you make, it’s how much money you keep.” This is alluding to taxes, of course, and hints at the ability of individuals to structure their lives to owe less taxes and “keep” a lot more of their own money. Employees can’t do this, independent contractors can. Independent contractors have more autonomy, less disclosure of private information and more control over their own financial lives and can usually take home more money.

Firms can also reduce the tax burden that they pay in cash to the IRS and that they pay in time and effort to comply with many different regulations.

To a lot of people, the specific rules regarding how to qualify a worker

as an independent contractor are opaque and convoluted³. Being classified for tax purposes as an employee⁴ when you thought independent contractor status would apply can cost both the firm and the worker a lot of money⁵.

This guide will break down the maze of factors, tests and questions into a simple to follow set of characteristics that lay out exactly what needs to be done to classify a worker as an independent contractor rather than an employee. It will also show you how to completely eliminate the risk of an unfavorable determination.

Federal law and the laws of individual states have different requirements to meet to be considered an independent contractor and for maximum benefit you need to comply with both. This guide will show you how to meet the requirements of both. California law serves as the basis for the analysis because California is as strict as almost any other state when classifying independent contractors. There will be some differences between California law and the law of other states, but in general if you satisfy the requirements for California, you probably meet the requirements of any other state. You should consult a local attorney on all tax or legal matters.

Being an independent contractor has significant tax, privacy and other benefits on its own. Becoming an independent contractor rather than an employee is also a vital component of a much larger overall strategy to [select your tax domicile](#). Implementing this as a part of the overall [tax domicile strategy](#) can save you an enormous amount in taxes each year and throughout your lifetime.

You should start feeling really good right about now. You are about to learn a very powerful strategy.

3 See *NLRB v. United Insurance Co.*, 390 U.S. 254 (1968); *Community for Creative Nonviolence v. Reid*, 490 U.S. 730 (1989); *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992); 42 USC § 12101 *et seq.*; *U.S. v. Silk*, 331 U.S. 704 (1947); 29 USC § 2601, *et seq.*; 29 USC §§ 203(e)(i), 203(d) and 203(g); 42 USC § 2000e *et seq.*; 29 USC § 621 *et seq.*; IRC § 3101; IRC §§ 3121(d) and 3306(i); IRS Publication 15-a

4 IRC § 3121(d)

5 IRC § 3509

BENEFITS FOR INDEPENDENT CONTRACTORS

There are significant benefits to being an independent contractor as opposed to being an employee. Here are some of those benefits:

Lower Taxes – Employees have very, very few tax deductions that they can take. Independent contractors have a significant amount of ordinary and necessary business expenses that they can deduct from their tax bill.⁶ If an employee and an independent contractor have exactly the same paycheck for a very similar job and have similar expenses, the independent contractor will probably “keep” a lot more of their money because they could pay far less in taxes. Some of those deductible items include the following:

Home Office: If you regularly use an area of your home exclusively for business purposes and meet some other requirements, you may be able to deduct a portion of your home expenses for tax purposes. Be careful when taking this deduction because it often raises flags for an audit.⁷

Equipment: Equipment that you purchase for business use can be deducted. In most cases you will be able to deduct the yearly depreciation on the capital asset. In other cases you may be able to deduct a large portion of the cost in the year of the purchase, rather than the depreciation amount.

Business Meals and Entertainment: 50% of your expenses for feeding and entertaining potential clients or business associates can be deducted if it is related to your business. Good documentation of the event is helpful to prove the legitimacy of the expense.

Health Insurance Premiums: A large portion of your health insurance expenses for you and your family reduce your adjusted gross income (AGI). When the threshold is met for reducing your AGI, the

6 IRC § 67; IRS Form 1040 Schedule C; IRS Publication 535

7 www.irs.gov/newsroom/article/0,,id=163079,00.html

remaining expenses can be deducted as itemized deductions.⁸

Travel: If you make any business related trips outside of the normal route between your home and office, you can deduct the cost of that trip.

Legal and Professional Fees: Fees paid to lawyers, accountants and consultants concerning your status as an independent contractor can be deducted in the year the expense is made. Since this is a consulting guide concerning your status as an independent contractor, if you qualify by the end of this tax year, you can deduct the expense of this guide as your first deduction!

Dues and Publications: Any subscriptions to media that relates to your work and dues for membership in any work related associations and organizations can be deducted.

Retirement: Contributions made to a qualified retirement plan are tax deductible for independent contractors and allow for tax deferred growth of that contribution. This can be one of the most valuable benefits to simply being an independent contractor.

Other tax benefits could include the ability to control the state where you are domiciled for tax purposes. Employees have almost no control over this key aspect of their tax domicile.

Higher Pay – Employees cost firms a lot more money per hour than the employee gets paid. For this reason, it can be cheaper for firms to hire an independent contractor for more money per hour than an employee, even though the two are producing the same end result.

More Freedom – An independent contractor has much more autonomy than an employee. They have more control over their day to day work, their schedule, and a lot more. This autonomy leads to a more satisfying work experience for most independent contractors.

⁸ IRS Form 1040 Schedules C and A; IRS Publication 502

RISKS/COSTS FOR INDEPENDENT CONTRACTORS

There are risks and costs which an independent contractor might assume which are not generally assumed by an employee. Usually, the overall risks and costs of the transaction do not change, only the party bearing the cost. These risks and costs are essentially shifted from the firm to the independent contractor, but so is the tax benefit.

Job Stability – The regulation of employer and employee relationships usually makes it harder to fire an employee or to reduce their working hours than it would be to stop working with, or to reduce the work of, an independent contractor.⁹ These risks may be significant in more highly regulated states and less in other states where there is less regulation of employment. The risk may also be built in to the cost for workers to acquire the job in the first place.

Benefits – Employees sometimes get health insurance, retirement plan contributions, sick pay, paid vacation and other benefits from an employer, sometimes by law. Independent contractors do not automatically get these kinds of benefits. Independent contractors can factor these costs into the price they negotiate for their services.

Fees – Licensing fees, dues for professional organization and other similar costs are often taken care of by the firm or employer. An independent contractor will usually pay these tax deductible expenses themselves.

Periodic Tax Payments – Independent contractors must make periodic payments of income tax to the IRS throughout the year. An employer will usually withhold wages throughout the year to make those payments which the employee does not have to worry about paying. This can be an inconvenience and cost some time, but the net result is generally the same for both.

Keep Track of Records – An independent contractor will be

9 29 USC § 201, et seq.; 29 CFR § 500, et seq.

responsible for maintaining good records of costs, income and other items. An employer generally keeps track of all of this information for an employee. Taking the time and effort to maintain those records can be a hassle and may cost some money.

Complex Taxes – Because of the numerous deductions that are available to independent contractors, taxes become a lot more complex than for employees. It is important to speak with a professional tax preparer from the beginning so that you make wise choices from the start. You may also want to use [good tax preparation software](#) that will accommodate your more complex tax situation. Many times, the standard free tax software will not be able to handle your more complex situation. It might also be a good idea to [read about many of the tax deductions that you can take](#) and how to take them yourself.

Legal Protection – There are numerous federal and state laws protecting the legal rights of employees. Things like anti-discrimination laws, minimum wage requirements, hiring and firing practices, harassment and a host of other protections. Independent contractors are not afforded as many legal protections or it might be more difficult to make a similar claim.

BENEFITS FOR FIRMS

Business owners and anyone who needs to hire a helping hand can make their business much more profitable by hiring independent contractors instead of employees. If you are a worker, it can be helpful to understand the perspective of firms so that you can successfully negotiate favorable terms, or even convince a current employer to hire you as an independent contractor instead. Following are benefits to firms to improve the profitability of their business.

Lower Expenses - Employees cost firms a lot. You pay them their salary or hourly wage, benefits, paid vacation, sick leave, payroll taxes, unemployment, insurance, overtime, and a lot more for each employee. Most of those costs can be completely avoided when hiring an independent contractor instead of hiring an employee.

Lower Taxes – All employers will pay 7.4% - 8.6% of the employees wages as federal social security tax and 1.4% - 2% in federal Medicare taxes. They pay up to 6.2% in unemployment tax. Most employees cost their firms 15% more than their base salary in these taxes alone. Firms do not have to pay those taxes if they hire independent contractors. In addition, firms can deduct what they pay to independent contractors as an ordinary and necessary business expense.

Reduce Regulatory Risk – The employer/employee relationship is heavily regulated and even the most conscientious employer is exposed to regulatory risk. From minimum wage requirements to overtime pay, discrimination and harassment lawsuits, employers are exposed to potentially huge liabilities for every employee that they hire. Independent contractors do not expose firms to nearly as much liability because there is less regulation over arms length transactions with autonomous independent contractors.

Flexibility – Employers who need to take on new projects, shift focus or enter new markets can face challenges when they are trying to keep their regular employees busy. Independent contractors are trained more quickly, and offer more flexibility in assignments on ongoing or temporary projects. You can add to or reduce the work force that your company uses with much greater speed. There is no need to keep independent contractors busy with continuous work during the slow season.

All together, most employees cost their employers around 50% more than the employee makes. So if an employee make \$20 per hour, the employer actually pays around \$30 per hour for that work. Independent contractors can take advantage of that arbitrage, earning more per hour, while the firm pays less.

RISKS/COSTS FOR FIRMS

There are some risks to the firms.

Less Control - Firms have less control over the day to day activities

of the independent contractor. Not everyone can handle the independence and autonomy of being an independent contractor. Firms run the risk that a project will not get done in time, won't get done right, or won't get done at all when they cede some control. More independent contractors means a looser corporate structure and less control over some processes and timelines.

If you are a worker reading this, you are either smart, motivated or a combination of both. I am betting you are both. This makes you an excellent candidate for being an independent contractor because you will not have a problem with autonomous work. You are disciplined and will complete projects correctly and on time. You do things the right way. As long as a firm understands that you are the kind of person that works optimally with this kind of autonomy, you should be able to resolve their concerns.

Flexibility – Many companies are large behemoths with a centralized structure and a thousand self imposed rules and policies. The regular employees of large corporations like McDonald's or Starbucks have little chance of working as independent contractors. Large corporations may still be able to find ways to utilize more independent contractors and fewer employees. Outsourcing of shipping is a good example. Otherwise, smaller businesses that are more nimble will have more flexibility to create independent contractor relationships.

WHO CAN QUALIFY AS AN INDEPENDENT CONTRACTOR?

Certain types of workers listed below are explicitly categorized by law as either independent contractors or as employees, regardless of any other factors.¹⁰ The actual categorical definitions are quite complex so legal advice should be sought if you think you might qualify. If you fall into one of these categories, you will have no control over your characterization as an independent contractor or an employee.

Those who might automatically be considered **employees** include:

- Officers of a company,
- Truck drivers and other delivery people,
- Full time life insurance salespeople,
- Home workers who follow very explicit and uniform instructions or patterns,
- Traveling business to business salespeople, and
- Technical workers provided by a business to a client.

10 See IRC § 3121(D)(3)

Those automatically considered **independent contractors** are:

- Real estate agents,
- Direct sellers, and
- Babysitters.

FACTORS

Now we come to the meat and potatoes. Both California and the IRS will be looking specifically at a few different characteristics of your working relationship to see if you are an independent contractor or an employee. Sometimes they both look at the same factor for the same reason, sometimes they look at similar factors for different reasons and some factors will only be considered by one or the other. To achieve the desired benefits, you will need to qualify as an independent contractor for both the state and for the IRS. The explanations of each relevant characteristic will help you do that. The checklist provided later on page 22 is a short hand tool that will help you do this as well.

This guide gives you something that you cannot get anywhere else. The techniques and tools from the [book How To Vanish](#) and the website [HowToVanish.com](#) can be used to legally leverage the best facts possible to support your desire to be an independent contractor. When there is a tool or technique that might affect a particular factor, I will explain that technique so that you can use it to your benefit. The tax domicile strategy, which can be implemented easier by independent contractors, is a very powerful tax saving strategy.

GENERAL PRINCIPLE

The line of demarcation between an employee and an independent contractor is that an independent contractor has **the right to direct and control the manner and means by which the work is performed** and an employee doesn't. The exact location of the line is clear in some areas and murky in others. The more factors that demonstrate that the worker is in control of their own work, the more likely it is that the

government will determine that the worker is safely within the boundaries of an independent contractor.

ESSENTIAL (SIGNIFICANT)

You should be able to answer “yes” to all of these three Essential characteristics to be classified as independent contractor. If the answer is “no” to one of these factors, the answers to remaining factors of all categories should overwhelmingly be “yes”. Two or more “no” answers here means that you are almost certainly an employee.

1. Worker is autonomous

Independent contractors are free to do jobs in their own way, using specific methods they choose, without regular supervision. **A person or firm engages an independent contractor for the job's end result.** When a worker is supervised by a firm, required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee. Specific instructions on the end result or how to turn in work are consistent with independent contracting.

The IRS calls this one giving instructions. If a worker gets instructions on how to do the work, or if the worker needs to seek approval to start new phases of a project already under way, this worker is usually an employee. Suggestions can be given to independent contractors. Suggestions are not instructions if they are not mandatory. Independent contractors can keep their customers, the firms they contract with, happy by following suggestions whenever possible.

2. Worker and firm must continue until contract completed

If the worker can be fired without notice, it indicates that the worker does not have control. Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless the terms of the contract are violated. Independent contractors are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires an attorney to review his or her lease, the attorney

would get paid only after satisfactory completion of the job.

3. Worker performs peripheral function of the business

Work which is a necessary, core part of the regular trade or business is normally done by employees. For example, a shoe store owner could not operate without sales clerks in the store to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a one-time or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

IMPORTANT

The next set of factors are considered by California to be of heightened importance but not as significant as the first three factors. Two or three “no” answers to questions 4-6 generally indicate an employee unless the remaining factors are overwhelmingly “yes”.

4. Worker has separately established business

When individuals hold themselves out to the general public as available to perform services similar to those performed for the firm, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. It is helpful if the worker works for more than one client, but is not necessary.

The IRS almost always finds a worker to be an independent contractor when the contracts are made with a legal entity such as an LLC or a corporation rather than with a worker in their own name and/or the entity is paid rather than the worker.

How To Vanish Tip: You can talk with an attorney about forming a business entity such as an LLC or corporation in order to take advantage of the benefits of this factor. You will want to take into consideration the state where the entity is formed. This can have

significant tax benefits, especially if used together with tax domicile strategies. Talk with your attorney about the benefits, drawbacks and requirements applicable to you. Doing business as a business entity also helps protect the privacy of the worker.

5. Worker makes decisions affecting profitability

An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer a loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposition of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and selection of the types and amounts of insurance coverage for the business.

The IRS phrases this factor by asking whether there is a potential for the independent contractor to make a profit or loss. It is essentially the same question, but depending on who is asking it, you will want to phrase your answer to best conform with their metric.

Tip: These risks should be considered when negotiating the overall price the independent contractor will be paid for their services. This provides another opportunity for an astute worker to take advantage of arbitrage opportunities in acquiring tools and equipment cheaper than the firm. Firms may also reduce assets on their balance sheets and increase expenses if an independent contractor will be factoring the cost of their own equipment into their price.

6. Worker has substantial investment/risk of loss

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks. Independent contractors can also choose what tools they want to use. To the extent necessary for the specific type of business, independent contractors provide their own business facility. Following the suggestion to use certain tools and equipment owned by any entity is not the same as

mandatory use of specific tools and equipment.

Tip: This should be factored into the negotiated price for services. It could increase the overall price an independent contractor could charge, versus the cost of an employee, while still being more profitable for the firm. It also provides another opportunity for an astute worker to take advantage of arbitrage opportunities because the firm can worry less about maintaining equipment and the worker can increase their price to pay for some equipment of their own.

HELPFUL

The remaining questions are of lesser value individually, but they can help to balance out any “no” answers listed above.

7. Only independent contractors do the same work at the same firm

If the work being done is basically the same as work that is normally done by other employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, or to fill in on a temporary basis. This worker is probably a temporary employee, not an independent contractor.

Similar tasks will not be classified as substantially similar if the other employees are subject to significantly more control than the independent contractor and the independent contractor has control over how they complete the same task.

8. Work is skilled labor

Workers who are considered unskilled or semi-skilled are the type of workers labor laws are designed to protect so they are generally employees. Skilled laborers are usually independent contractors.

9. Worker is self trained

In skilled or semi-skilled work, independent contractors usually do not need training. If training on procedures and methods is required to do

the task, it is an indication that the worker is an employee. A firm may need to train a skilled independent contractor on the specifications and requirements for the end result.

10. Worker paid per job rather than hourly or salary

Independent contractors agree to do a job and bill for the service performed. Payments to independent contractors for labor or services are usually made upon the completion of the project or completion of the performance of specific portions of the project.

Tip: The worker can again take advantage of efficiency. An employee might be paid \$10 per hour to mow the lawn and take 2 hours to do it. The independent contractor can offer to mow the lawn for \$15, and then find a way to complete it in one hour, increasing her profit per hour and decreasing costs for the firm.

11. Worker has only been an independent contractor

If the worker previously performed the same or similar services for the firm as an employee, it is an indication that the individual is still an employee. Remember that the work is probably not the same or similar if the level of control has changed.

12. Worker believes/intends to be independent contractor

This will be easy for workers because if you are a worker reading this, you are probably going to be promoting the status of independent contractor. If you are a firm, make it clear to those you hire that they are independent contractors. When both the worker and firm believe the worker is an independent contractor, a strong argument exists to support an independent contractor relationship between the parties.

13. Worker controls schedule

Generally if the worker can work on their own schedule, they are an independent contractor. In many cases, practical obstacles regarding the nature of the work to be done prevent the worker from varying from the suggested schedule of the firm.

How To Vanish Tip: Doing as much work over the internet and by logging in from a proxy server allows the worker more control over the time and place that they do their work.

14. Worker hires assistants

If the worker must get approval or must hire selected individuals to perform some of the work, they might not be an independent contractor. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their own employees without the knowledge or consent of the firm. An independent contractor retains decision making control when following a non-mandatory suggestion.

15. Worker decides where to purchase supplies

If use of certain suppliers is mandatory, the worker looks more like an employee. Suggestions do not destroy the independent contractor's decision making power if the suggestions are not mandatory.

16. Worker decides order/sequence of work

In most cases the independent contractor can choose which part of an overall project to complete first as long as the entire project is completed by the due date.

17. Worker complies with government regulations

Many government regulations require certain instructions to be given or precautions to be taken. If the firm requires that the independent contractor follow those regulations, there is no destruction of independent contractor status. If the firm actively trains, and enforces the regulations then the worker might be an employee.

18. Worker has unreimbursed expenses

Independent contractors will generally have some expenses. The higher the unreimbursed expenses of the independent contractor the better.

Tip: Again, anticipated expenses should be factored into the overall price of services. Workers can take advantage of the opportunity to reduce actual expenses and deduct expenses in order to bring home more pay.

19. Worker advertises separately

Independent contractors can normally advertise their services in newspapers and/or publications, yellow page listings, Craigslist, ELance and/or seek new customers through the use of business cards. This is helpful even if the worker does not actually do any other work or even respond to any other offers.

20. Worker avoids receiving benefits

Part of the reason firms hire independent contractors is to avoid paying benefits. If firms pay retirement, health or other benefits to a worker, the worker will likely be an employee.

Tip: Foregoing valuable benefits is one of the big costs for independent contractors. Fortunately, many benefits that they forego cost the firm money but are worthless to the worker so both parties can benefit by not having those costs burden the overall transaction. The cost for the worker to get desired benefits separately should be considered in the price they charge for the overall service.

21. Contract describes independent contractor

Having a written contract is easy and can only help you if done right. The relationship must also be in substance, not just in name, that of an independent contractor. The IRS looks at this as evidence of the subjective belief of the individuals. You should seek the advice of an attorney to draft this contract so that it best represents independent contractor status and so that it adequately protects your interests.

RISK FREE INSURANCE

Now that you have negotiated an independent contractor relationship and you have structured the relationship as well as you can to reflect true independent contractor status, there are probably some factors which indicate that you might be an independent contractor and others which indicate that you might be an employee. How do you know if the IRS and the state of California will BOTH decide that you are an independent contractor?

Both entities have a free form that you can fill out to determine worker status.¹¹ Filling out the form is completely voluntary, but getting a determination can provide powerful evidence in the event that you are audited in the future. Both the worker and the firm will have to provide information to the IRS. Only the firm needs to provide info to the state of California.

Both forms are questionnaires with a series of yes or no, multiple choice and fill in the blank questions. These questionnaires are more broad than the factors listed, but the factors can be consulted to answer the most important questions in the most favorable way possible. When completing a fill in the blank answer, try and use language and phrases from the factor descriptions above if they accurately reflect your actual

11 California – www.edd.ca.gov/pdf_pub_ctr/de1870.pdf; IRS - www.irs.ustreas.gov/pub/irs-pdf/fss8.pdf

arrangement to best satisfy what the government is looking for. Obviously every independent contractor will be very different so you should not copy the information, only use it as a guide.

There is no cost to filing these requests. There is also essentially no risk to the worker or the firm. The IRS does not respond to hypothetical situations so you will need to have actually entered into an agreement before filing the form. If you or the firm are particularly nervous, you can wait to start any significant work until the government has responded with a determination.

If work is started before the official determination has been made and you later find that the worker should have been classified as an employee, the worker and the firm will owe the government what would have been owed in withholding tax, FICA, unemployment, etc. so there is very little risk in beginning work before a determination is made. If a worker is classified as an employee, all you need to do is renegotiate the terms of the arrangement to better reflect an independent contractor structure. Resubmit a new questionnaire to see if it is enough.

You can also do your own common sense check by following the checklist provided to see if it appears that the worker has control over how they perform the work.

IMPLEMENTATION

Now that you know all of the factors and how they are considered, you can begin to apply them to your situation. You might be a firm that wants to reduce costs and increase quality of work. You might be an employee who plans to become an independent contractor in the future. You might be an employee that wants to renegotiate the terms of your work so that you can be an independent contractor. Or, you might already hire independent contractors or be working as an independent contractor and you just want to be sure.

Go through the checklist and apply it to the work that is currently being done or that is contemplated. For all of the factors that tend to describe an employee rather than an independent contractor, think of ways that

you can structure the work so that an independent contractor can do it instead. For example, if the work involves use of a computer, think of how the worker can use their own laptop rather than a computer provided by the firm, and how free tools, such as Google docs, [OpenOffice](#) and other shareware can be used rather than using expensive software. Speak to an attorney about drafting an appropriate service agreement as an independent contractor and setting up a separate business entity.

You might also want to do a projected cost benefit analysis for the worker and the firm to demonstrate how much the firm is likely to save by hiring an independent contractor rather than an employee. This will also help you to know the increased risks and costs so that you can come up with an acceptable price to pay or charge for services, earning more money for the worker at the end of the day, yet costing the firm less.

Take your research and ideas to your present employer or employees. Workers might want to take the research to an interview with a firm that is thinking of hiring an employee rather than an independent contractor. Use all of the information you have prepared to negotiate the terms of your agreement. There will be many small minded firms or workers who are either too inflexible, too unintelligent or too timid to accept your offer. You don't want to work with someone like that anyways. The firms and workers that are willing to accept this kind of proposal will likely be far better relationships in the long run.

CONCLUSION

There are significant benefits to both firms and workers in structuring relationships as independent contractors rather than employees. Lower costs and lower risks to the firm, higher pay, greater autonomy and more privacy to the workers. The principles are fairly simple but can be extremely rewarding to those who apply them.



Independent Contractor Checklist of Factors

Factor

1-3 Critical: All should be “yes”. If one is “no,” all remaining factors should overwhelmingly be “yes”.

- | | | |
|--|-----|----|
| 1. Worker is autonomous | Yes | No |
| 2. Worker/firm must continue until contract completed | Yes | No |
| 3. Worker performs peripheral function of the business | Yes | No |

4-6 Important: Almost all should be yes. If one or two are “no,” all remaining factors should overwhelmingly be “yes”.

- | | | |
|---|-----|----|
| 4. Worker has separately established business | Yes | No |
| 5. Worker makes decisions affecting profitability | Yes | No |
| 6. Worker has substantial investment/risk of loss | Yes | No |

7-21 Helpful: May or may not be “yes” unless needed.

- | | | |
|---|-----|----|
| 7. Only independent contractors do the same work at the same firm | Yes | No |
| 8. Work is skilled labor | Yes | No |
| 9. Worker is self trained | Yes | No |
| 10. Worker paid per job rather than hourly or salary | Yes | No |
| 11. Worker has only been an independent contractor | Yes | No |
| 12. Worker believes/intends to be independent contractor | Yes | No |
| 13. Worker controls schedule | Yes | No |
| 14. Worker hires assistants | Yes | No |
| 15. Worker decides where to purchase supplies | Yes | No |
| 16. Worker decides order/sequence of work | Yes | No |
| 17. Worker complies with government regulations | Yes | No |
| 18. Worker has unreimbursed expenses | Yes | No |
| 19. Worker advertises separately | Yes | No |
| 20. Worker avoids receiving benefits | Yes | No |
| 21. Contract describes independent contractor | Yes | No |

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