

INDEPENDENT CONTRACTOR

Classification Assessment



The factors weighed by the Internal Revenue Service (IRS Factors) in determining worker status for payroll tax withholding purposes are different than the factors weighed by the Department of Labor in determining worker status for Fair Labor Standards Act minimum wage and overtime purposes (FLSA Factors).

To determine a worker's status under the IRS and/or FLSA criteria, answer the following questions by checking "Yes" or "No" as applicable. In general, "Yes" answers support a determination of "employee" status; "No" answers support a determination of "independent contractor" status.

A worker does not have to meet all the criteria to qualify as an employee or independent contractor, and no single factor is decisive in determining a worker's status. The individual circumstances of each case determine the weight assigned to each factor.

IRS FACTORS

I. Factor: Behavioral Control

☐ Yes ☐ No

- ☐ Is the worker required to comply with your instructions about when, where, and how his or her services are to be performed?
- ☐ Does your business provide the supplies, materials, equipment, and other tools necessary to perform the work?
- ☐ Is the worker required to perform the services personally and not delegate the tasks?
- ☐ Is the worker required to perform the services on your business' premises?
- ☐ Is the worker required to undergo company-provided training about procedures and methods so that the work is performed in a particular manner and with a particular result?
- ☐ Is the worker required to submit regular oral or written reports?
- ☐ Does your business have the right to hire, fire, supervise, or pay assistants of the worker?

II. Factor: Financial Control

☐ Yes ☐ No

- ☐ Does the worker provide you services without maintaining a separately established business offering similar services to the market?
- ☐ Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis?
- ☐ Does your business reimburse the worker's business and travel expenses?
- ☐ Is the investment made by the worker in order to perform the services minor or relatively small compared to the investment of the business?
- ☐ Is the worker unable to make business decisions that would result in the worker earning a profit or incurring a financial loss?
- ☐ Is the worker prohibited from performing similar services for other businesses at the same time?

III. Factor: Relationship of the Parties ☐ Yes ☐ No

- ☐ Is your business providing employee-type benefits to the worker?
- ☐ Are the services provided a key activity or a part of your regular business activity?
- ☐ Can the worker be discharged at any time without risking a lawsuit?
- ☐ Can the worker quit at any time without risking a lawsuit?
- ☐ Does your business have employees who do the same type of work?
- ☐ Did your business engage the worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period?

FLSA FACTORS

I. Factor: Whether the worker is in business for himself or herself.

☐ Yes ☐ No

- ➡ Does the worker provide your business services without maintaining a separately established business offering similar services to the market?

II. Factor: The extent to which the service rendered is an integral part of your business.

☐ Yes ☐ No

- ➡ Does the worker perform the primary type of service that your business provides for customer or clients, or a regular job that is part of your business' overall process of production?
- ➡ Does the worker regularly supervise any of your business' employees?
- ➡ Does your business have employees with substantially similar job functions, duties, and responsibilities?

III. Factor: The permanency of the working relationship.

☐ Yes ☐ No

- ➡ Did your business engage the worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period?
- ➡ Can the worker be discharged at any time without risking a lawsuit?

IV. Factor: The amount of the worker's investment in facilities, equipment, or the employment of workers.

☐ Yes ☐ No

- ➡ Is the investment made by the worker in order to perform the services minor or relatively small compared to the investment of the business?
- ➡ Is the worker reimbursed for any purchases, travel, or other expenses in connection with the work?
- ➡ Does your business pay the worker's assistants or other workers?

V. Factor: The nature and degree of your control of the worker.

☐ Yes ☐ No

- ➡ Is the worker required to comply with your instructions about when, where, and how his or her services are to be performed?
- ➡ Does your business generally exercise more than minimal supervision of the worker?
- ➡ Does your business have the right to hire, fire, or supervise assistants of the worker?

VI. Factor: The worker's opportunity for profit or loss.

☐ Yes ☐ No

- ➡ Is the worker unable to make business decisions that would result in the worker earning a profit or incurring a financial loss?

VII. Factor: The level of skill and initiative required in performing the job and for the success of the claimed independent enterprise.

☐ Yes ☐ No

- ➡ Does the worker perform only routine tasks requiring a little training?
- ➡ Did your business spend significant amounts of time and money providing training for the worker?

In general, "Yes" answers support a determination of employee status; "No" answers support a determination of independent contractor status. **Remember that a worker does not have to meet all the criteria to qualify as an employee or independent contractor, and no single factor is decisive in determining a worker's status.** The individual circumstances of each case determine the weight assigned to each factor.

Under the IRS criteria, this worker has been classified as an:

- ☐ **Employee**
- ☐ **Independent Contractor**

Under the FLSA criteria, this worker has been classified as an:

- ☐ **Employee**
- ☐ **Independent Contractor**



whirks
PAYROLL | HR | BENEFITS

901.752.2422
info@whirks.com
www.whirks.com