

## IRS 20 Factors and 3 Categories of Control

### Revenue Ruling 87-41: The Twenty Factors

To help determine whether a worker is an employee under the common law rules, the IRS identified 20 factors that may indicate whether the employer can exercise enough control to establish an employer-employee relationship. These factors, set forth in Revenue Ruling 87-41, were based on the circumstances that the courts identified and relied upon to decide whether an employment relationship existed. Not all the factors must be present to find an employee/employment relationship, but the factors are guides to use to assess the likelihood as to whether an individual is an employee or an independent contractor.

- (1) Instructions. An employee must comply with instructions about when, where and how to work. The control factor is present if the employer has the right to require compliance with the instructions.
- (2) Training. An employee receives on-going training from, or at the direction of, the employer. Independent contractors use their own methods and receive no training from the purchasers of their services.
- (3) Integration. An employee's services are integrated into the business operations because the services are important to the business. This shows that the worker is subject to direction and control of the employer.
- (4) Services rendered personally. If the services must be rendered personally, presumably the employer is interested in the methods used to accomplish the work as well as the end results. An employee often does not have the ability to assign their work to other employees, an independent contractor may assign the work to others.
- (5) Hiring, supervising and paying assistants. If an employer hires, supervises and pays assistants, the worker is generally categorized as an employee. An independent contractor hires, supervises and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
- (6) Continuing relationship. A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. The IRS has found that a continuing relationship may exist where work is performed at frequently recurring intervals, even if the intervals are irregular.
- (7) Set hours of work. A worker who has set hours of work established by an employer is generally an employee. An independent contractor sets his/her own schedule.
- (8) Full time required. An employee normally works full time for an employer. An independent contractor is free to work when and for whom he or she chooses.
- (9) Work done on premises. Work performed on the premises of the employer for whom the services are performed suggests employer control, and therefore, the worker may be an employee. Independent Contractor may perform the work wherever they desire as long as the contract requirements are performed.
- (10) Order or sequence set. A worker who must perform services in the order or sequence set by an employer is generally an employee. Independent Contractor performs the work in whatever order or sequence they may desire.
- (11) Oral or written reports. A requirement that the worker submit regular or written reports to the employer indicates a degree of control by the employer.
- (12) Payments by hour, week or month. Payments by the hour, week or month generally point to an employer-employee relationship.
- (13) Payment of expenses. If the employer ordinarily pays the worker's business and/or travel expenses, the worker is ordinarily an employee.

(14) Furnishing of tools and materials. If the employer furnishes significant tools, materials and other equipment by an employer, the worker is generally an employee.

(15) Significant investment. If a worker has a significant investment in the facilities where the worker performs services, the worker may be an independent contractor.

(16) Profit or loss. If the worker can make a profit or suffer a loss, the worker may be an independent contractor. Employees are typically paid for their time and labor and have no liability for business expenses.

(17) Working for more than one firm at a time. If a worker performs services for a multiple of unrelated firms at the same time, the worker may be an independent contractor.

(18) Making services available to the general public. If a worker makes his or her services available to the general public on a regular and consistent basis, the worker may be an independent contractor.

(19) Right to discharge. The employer's right to discharge a worker is a factor indicating that the worker is an employee.

(20) Right to terminate. If the worker can quit work at any time without incurring liability, the worker is generally an employee.

### Three Categories of Control Factors

Over the years, the Internal Revenue Service recognized changes in business practices and therefore created three categories of factors to assess the degree of control and independence. These factors are to be used in conjunction with the 20 Factors.

(1) Behavioral Control - Includes the type of instructions the business gives to the worker, such as when and where to do the work, and the training the business provides to the worker. The key consideration is whether the business has retained the right to control the details of the worker's performance or has relinquished that right

(2) Financial Control - Address the business's right to control the business aspects of the worker's job.

(3) Relationship Of Parties - The nature of the relationship may be evidenced by:

- \_ a written contract;
- \_ the benefits the business provides to an employee, such as paid vacation and health coverage;
- \_ the permanency of the position; and
- \_ the extent to which the services performed are a key aspect of the regular business of the company.

# Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding

► Information about Form SS-8 and its separate instructions is at [www.irs.gov/formss8](http://www.irs.gov/formss8).

For IRS Use Only:  
Case Number:

Earliest Receipt Date:

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

**Note.** If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ►

### Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* in the separate instructions for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

**Parts I-V.** All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

### Part I General Information

- This form is being completed by:  Firm  Worker; for services performed \_\_\_\_\_ to \_\_\_\_\_ .  
(beginning date) (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). \_\_\_\_\_
- Total number of workers who performed or are performing the same or similar services: \_\_\_\_\_ .
- How did the worker obtain the job?  Application  Bid  Employment Agency  Other (specify) \_\_\_\_\_
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings).** In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ \_\_\_\_\_ .  
If both Form W-2 and Form 1099-MISC were issued or received, explain why. \_\_\_\_\_
- Describe the firm's business. \_\_\_\_\_

**Part I** General Information (continued)

- 7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: \_\_\_\_\_  
 Previous owner's taxpayer identification number: \_\_\_\_\_ Change was a:  Sale  Merger  Acquisition  Reorganization  
 Other (specify) \_\_\_\_\_  
 Description of above change: \_\_\_\_\_  
 \_\_\_\_\_  
 Date of change (MM/DD/YY): \_\_\_\_\_
- 8 Describe the work done by the worker and provide the worker's job title. \_\_\_\_\_  
 \_\_\_\_\_
- 9 Explain why you believe the worker is an employee or an independent contractor. \_\_\_\_\_  
 \_\_\_\_\_
- 10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?  
 Yes  No  N/A  
 If "Yes," what were the dates of the prior service? \_\_\_\_\_  
 If "Yes," explain the differences, if any, between the current and prior service. \_\_\_\_\_  
 \_\_\_\_\_
- 11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. \_\_\_\_\_  
 \_\_\_\_\_

**Part II** Behavioral Control (Provide names and titles of specific individuals, if applicable.)

- 1 What specific training and/or instruction is the worker given by the firm? \_\_\_\_\_  
 \_\_\_\_\_
- 2 How does the worker receive work assignments? \_\_\_\_\_  
 \_\_\_\_\_
- 3 Who determines the methods by which the assignments are performed? \_\_\_\_\_
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? \_\_\_\_\_  
 \_\_\_\_\_
- 5 What types of reports are required from the worker? Attach examples. \_\_\_\_\_  
 \_\_\_\_\_
- 6 Describe the worker's daily routine such as his or her schedule or hours. \_\_\_\_\_  
 \_\_\_\_\_
- 7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. \_\_\_\_\_  
 \_\_\_\_\_
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). \_\_\_\_\_
- 9 Is the worker required to provide the services personally? . . . . .  Yes  No
- 10 If substitutes or helpers are needed, who hires them? \_\_\_\_\_
- 11 If the worker hires the substitutes or helpers, is approval required? . . . . .  Yes  No  
 If "Yes," by whom? \_\_\_\_\_
- 12 Who pays the substitutes or helpers? \_\_\_\_\_
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? . . . . .  Yes  No  
 If "Yes," by whom? \_\_\_\_\_

**Part III Financial Control** (Provide names and titles of specific individuals, if applicable.)

- 1 List the supplies, equipment, materials, and property provided by each party:  
The firm: \_\_\_\_\_  
The worker: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 2 Does the worker lease equipment, space, or a facility?  Yes  No  
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) \_\_\_\_\_
- 3 What expenses are incurred by the worker in the performance of services for the firm? \_\_\_\_\_
- 4 Specify which, if any, expenses are reimbursed by:  
The firm: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 5 Type of pay the worker receives:  Salary  Commission  Hourly Wage  Piece Work  
 Lump Sum  Other (specify) \_\_\_\_\_  
If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. \$ \_\_\_\_\_
- 6 Is the worker allowed a drawing account for advances?  Yes  No  
If "Yes," how often? \_\_\_\_\_  
Specify any restrictions. \_\_\_\_\_
- 7 Whom does the customer pay?  Firm  Worker  
If worker, does the worker pay the total amount to the firm?  Yes  No If "No," explain. \_\_\_\_\_
- 8 Does the firm carry workers' compensation insurance on the worker?  Yes  No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? \_\_\_\_\_
- 10 Does the worker establish the level of payment for the services provided or the products sold?  Yes  No  
If "No," who does? \_\_\_\_\_

**Part IV Relationship of the Worker and Firm**

- 1 Please check the benefits available to the worker:  Paid vacations  Sick pay  Paid holidays  
 Personal days  Pensions  Insurance benefits  Bonuses  
 Other (specify) \_\_\_\_\_
- 2 Can the relationship be terminated by either party without incurring liability or penalty?  Yes  No  
If "No," explain your answer. \_\_\_\_\_
- 3 Did the worker perform similar services for others during the time period entered in Part I, line 1?  Yes  No  
If "Yes," is the worker required to get approval from the firm?  Yes  No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. \_\_\_\_\_
- 5 Is the worker a member of a union?  Yes  No
- 6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. \_\_\_\_\_
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? \_\_\_\_\_
- 8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? \_\_\_\_\_
- 9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? \_\_\_\_\_
- 10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? \_\_\_\_\_

**Part V For Service Providers or Salespersons.** Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? .....
- 2 Who provides the worker with leads to prospective customers? .....
- 3 Describe any reporting requirements pertaining to the leads. ....
- 4 What terms and conditions of sale, if any, are required by the firm? .....
- 5 Are orders submitted to and subject to approval by the firm? . . . . .  **Yes**  **No**
- 6 Who determines the worker's territory? .....
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? . . . . .  **Yes**  **No**  
 If "Yes," whom did the worker pay? .....
- 8 If "Yes," how much did the worker pay? . . . . . \$ .....
- 8 Where does the worker sell the product (for example, in a home, retail establishment)? .....
- 9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. ....
- 10 Does the worker sell life insurance full time? . . . . .  **Yes**  **No**
- 11 Does the worker sell other types of insurance for the firm? . . . . .  **Yes**  **No**  
 If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance . . . . . %
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation . . . . . %
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? . . . . .  **Yes**  **No**  
 Describe the merchandise and state whether it is equipment installed on the customers' premises. ....

**Sign Here** ▶ Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

▶ \_\_\_\_\_ Title ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_  
 Type or print name below signature.

