

Independent Contractor: Audit Checklist for Maintaining Independent Contractor (IC) Status

Contract Development

- Review IRS criteria, **Independent Contractor or Employee**, to ensure an independent contractor (IC) relationship.
- Use Form SS-8 for IRS determination of IC status if unclear and the determination cannot be made by the business.
- Develop a written agreement with an assigned specific scope of work for a specific duration.
- Do not have a contractor complete an employee application.
- Require the contractor to supply his or her own workers' compensation insurance.
- Require the contractor to work off company premises and/or require the contractor to supply his or her own equipment and tools.
- Require payment to be rendered upon completion of a certain task or job. Do not pay by the hour, week or month unless a flat fee is agreed to be paid at regular intervals.
- Do not pay contractor expenses. Businesses pay their own expenses, and expenses should be built into the contract for the cost of the entire job. The opportunity for profit or loss by the contractor helps to show financial independence from the employer.
- Do not provide continuing education training. The company may provide training specific to job or company procedures.
- Do not have contractors perform similar work of employees or perform routine work.
- Contractor work should not be close to core business operations and therefore considered employee-type work.
- Require documentation demonstrating an independent contractor relationship, such as copy of business or professional license, copy of insurance certificates, copies of the independent contractor's advertising, and copy of the contractor's business card and stationery.

Contract Signed; Contractor Work to Begin

- Require the contractor complete Form W-9, Request for Taxpayer Identification Number and Certification. This form can be used to request the correct name and taxpayer identification number, or TIN, of the worker. A TIN may be either a Social Security number (SSN) or an employer identification number (EIN).
- Do not complete an I-9.
- Do not pay ICs from a payroll account.
- Do not provide an employee handbook.
- Do not allow independent contractors to enroll in any company-sponsored benefit plans; do not pay contractors for any company holiday.
- Do not invite or permit contractors to attend company parties or special events.

- Do not issue company business cards, employee ID badges or facility keys to contractors.
- Restrict contractor participation in projects or department meetings.
- Do not allow or greatly limit an independent contractor's role in any hiring, disciplinary action or termination decisions.
- Do not require the contractor to work "full time" or have set hours. Contractors should control when and how they work.
- Do not conduct performance evaluations similar to employee evaluations. Companies should require deadlines and results and can require contractors to follow job and company rules.
- Review with the contractor's "company contact(s)," the contract scope and contractor limitations to maintain IC status.

Contract Work in Progress (1 month to end of contract)

- Periodically review contract and assigned scope of work to ensure IC is working within the contract scope and maintaining IC status.
- Confirm with company contact(s) that the contractor has not been provided additional duties or benefits outside the scope of the contract or anything else that would jeopardize independent contractor status.
- Retain records of all transactions with the contractor, such as contractor's invoices for billing.

Annually

- Review IRS criteria to ensure company is maintaining an IC relationship.
- Confirm W-9 is on record. It must be retained for four years.
- Send 1099-MISC each year for any contractor (e.g., attorney, accountant, consultant) paid \$600 or more for services provided during the year.
 - One copy provided to IC by January 31 of the year following payment.
 - One copy to IRS by February 28, unless filing electronically through use of the Filing Information Returns Electronically (FIRE system), in which case the form must be filed by March 31.
- Review W-9 Record Retention Schedule to purge unneeded files.

Four Years

- Retain W-9 for four years for future reference in case of any questions from the worker or the IRS.
- Destroy unneeded records that have met the four-year retention requirement unless employer is involved in a dispute that has not yet been reconciled.