

Employees Or Independent Contractors

by Diane H. Kramer

One question that I'm constantly asked is "Can I hire people as an independent contractor rather than employees?" What ever you decide to do, you must consider this as a critical issue because it can have major implication from a tax perspective. This is to help you determine what type of relationship you will create when you bring another individual into your business to work for you. It may not matter what your intention was concerning the worker's status, since the IRS and Courts look to specific facts and factors in making this decision and unfortunately, the rules can change.

The key question in deciding what classification your worker fits in is the "control" issue. The more "control" the employer exercises over the worker, the more likely the worker is an employee. Conversely, little or no control over the worker probably means that the worker is an independent contractor. A general rule is that anyone who performs services for you is your employee if you can control what will be done and how it will be done. But is you control or direct only the result of the work done and not the means and methods of accomplishing the result, then that person will be classified as an independent contractor. Both the IRS and Court have used the "20 factor test" (see below) to see if the employer demonstrated enough control over a worker in order to permit classifying that worker as an employee.

A worker is considered an employee if he or she:

- Must comply with the employer's instruction as to when, where, and how he or she is to work
- Is trained by or at the instruction of the employer
- Provides services that are integrated into the business' general operations
- Is personally required to render the services in questions

- Hires, supervises, and pays assistants on behalf of the employer
- Maintains a continuing working relationship with the employer
- Is required by the employer to work set hours
- Works full time for the employer
- Performs the work in question on the premises of the employer
- Is subject to the employer's control regarding the order or sequence of the work performed
- Is required to submit reports to the person for whom the work is performed
- Is paid by the hour, week, or month
- Is reimbursed for business and/or traveling expenses
- Has the employer provide the tools and materials necessary to do the work
- Has no significant investment in the facilities used to perform the work
- Works for only one firm at a time
- Does not make services available to the general public
- Can be fired at any time by the employer
- Can quit working for the employer at any time without incurring liability
- Has no direct interest in the profitability of the work accomplished.

Once you decide weather the person you hire is an employee or an independent contractor, you may be interested in knowing the advantages of both.

Advantages of having an Employee:

- You, as the employer, can exercise control over every aspect of the work
- You can prevent the employee from working for other companies, including your competitors
- You have the general ability to hire and fire the worker at your discretion
- You can set the hours and order of the work to be performed.

Advantages of having an Independent Contractor:

- The employer is NOT responsible for any employment taxes or income tax withholding;
- The employer is NOT responsible for paying fringe benefits (such as vacation, retirement, insurance, etc);
- The employer is NOT responsible for the payment of overtime (Payment is based upon a contract and not the number of hours worked);
- Many federal and state statutes that apply to employees do NOT apply to independent contractors;
- It is more difficult to hold the employer legally responsible for mistakes that the independent contractor makes.

Diane H. Kramer is the owner of Total Bookkeeping Operations and can be reached at 303-829-5517 or online at www.TBO-ETC.com.

Breathe the Clean

ACE Carpet & Upholstery Care has been serving clients in Douglas County since 1992!

Services include:

- Truck mounted Steam Cleaning using Rotary Jet extractors
- Carpet & Upholstery
- Tile floor cleaning
- Oriental & area rugs
- Leather furniture cleaning



303-840-0404

www.acecarpetcare.com



Call TODAY
and receive
10% off
VISA / MC

**Call ACE...and
have a healthy and
clean workplace**