

## Independent Contractor Self-Audit

**YES**   **NO**

1.     Is there a written contract for services between the company and the individual?  
[ ]    [ ]

Comment: If there is a written contract, the person is more likely an independent contractor, provided the person has freedom to negotiate in the contract, and the contract reflects a "give and take" in the negotiating process.

2.     Does the person supply his or her own work tools, equipment, and materials to perform the work?  
[ ]    [ ]

Comment: If the answer is yes, the person is more likely an independent contractor, provided that the person supplies and purchases his or her own tools and equipment without guidance from the company.

3.     Does the person provide the same service for a variety of other companies?  
[ ]    [ ]

Comment: If the person provides the same service to other companies, and is not required to provide that service only for one entity, the person is more likely an independent contractor. This is even more the case if the person holds him- or herself out to the public as providing services to several entities.

4.     Does the person control the manner in which he or she performs the job and the time in which he or she performs the services?  
[ ]    [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

5.     Can the individual either incur a loss or sustain a profit for performing the services?  
[ ]    [ ]

Comment: If the answer is yes, the person is more likely an independent contractor. One caveat is in order, however. The person must use his or her initiative and skill in developing business that will give him or her an opportunity

for a profit or a loss. Thus, someone who owns a business, selects marketing and sales methods, decides which products to sell, sets up a business organization, and solely controls the determinants of customer volume will more likely be an independent contractor. These play the most vital role in the opportunity for profit. Merely because a person exercises skill and initiative in how well he or she performs the job does not make the person an independent contractor. All individuals improve their chances for greater earnings by using initiative and skill to perform to the best of their ability. However, if the person owns no enterprise, and the scope of initiative is restricted to a few matters, that type of initiative is consistent with being an employee, not an independent contractor.

6. Is the person economically independent from the company?  
[ ] [ ]

Comment: If the person is essentially dependent upon his or her livelihood from one company, then the person is more likely an employee.

7. Is the compensation paid to the person determined on a project basis?  
[ ] [ ]

Comment: If it is on a project basis, rather than by wages per hour or per day, the person is more likely an independent contractor.

8. Does the person perform services different from those provided by the employer's actual employees?  
[ ] [ ]

Comment: If yes, the person is more likely an independent contractor.

9. Does the person work off the employer's premises, and in doing so, does not utilize the tools, equipment, and materials of the employer to perform services?  
[ ] [ ]

Comment: If the answer is yes, the person is less likely an employee.

10. Does the person have workers compensation insurance, unemployment insurance?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

11. Does the person have a d/b/a certificate filed with the county clerk or an incorporation filed with the NY Secretary of State?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

12. Does the person have stationary, business cards and invoices available?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

13. Does the person have a separate telephone and beeper number for his business?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

14. Does the person have employees?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

15. Does the person have advertisements placed in any public manner (e.g. yellow pages)?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

16. Does the person determine his/her hours of work, time off and projects on which he works?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

17. Is the person not subject to discipline or discharge for violating your rules?  
[ ] [ ]

Comment: If the answer is yes, the person is unlikely to be an employee.

18. Is the person paid by the project (not by the hour, day or week)?  
[ ] [ ]

Comment: If the answer is yes, the person is less likely an employee.

19. Is the person paid using a form 1099?  
[ ] [ ]

Comment: If the answer is yes, the person is more likely an independent contractor.

**Conclusion:**

Totals    \_\_ yes        \_\_ no

If your “yes” answers greatly outnumber your “no” answers, the person is more likely to be deemed an independent contractor. However, if even one or two “no” responses reveal a substantial level of control by your company over the work and location of the services performed, you may have converted the person into a statutory employee. Be very careful about who is regarded as an independent contractor because various government agencies will look very closely at the relationship with dire consequences if you are wrong. If you need a legal opinion, consult a lawyer. If you have questions, call Employers Associates 212-371-5800.