

Lancaster Accounting & Tax Service

4982 William Street, Lancaster, New York 14086 | (716) 717-0135| adussault@cpanow.net

INDEPENDENT CONTRACTORS

U.S. Department of Labor, IRS, and State Tests for Independent Contractors

IRS Common Law Test

The IRS designed a 20-factor test (Rev. Rul. 87-41) to assist employers in determining whether a worker is an **employee or an independent contractor**. No one factor is more conclusive than the others, and each is to be taken by weighing the entirety. If after reviewing the 20 factors, the result is more yes than no, then it is most likely that the worker is in fact an *employee*. While the condensed three-factor test is the IRS's primary focus, the 20-factor test continues to have relevance. It is important to note that the test is not conclusive as to corporate officers and does not apply to statutory independent contractors—the common law test is only meant to serve as a guide. A

https://corporate.rfmh.org/accounts_payable/forms/IRS_ChecklistforIndependentContractors.pdf

IRS Three-Factor Test

Factor 1: Behavioral Control

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an *employee* when the business has the right to direct and control the worker. The business *does not* have to actually direct or control the *way* the work is done as long as the employer has the right to direct and control the *work* (www.irs.gov/businesses/small-businesses-self-employed/behavioral-control).

Factor 2: Financial Control

Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job (www.irs.gov/businesses/small-businesses-self-employed/financial-control).

Factor 3: Type of Relationship

Type of relationship refers to facts that show how the worker and business perceive their relationship to each other (www.irs.gov/businesses/small-businesses-self-employed/type-of-relationship).