

Resaerch

Business



The difference between an independent contractor and an employee has a substantial impact on the amount of taxes levied by the IRS. This distinction also affects other costs such as worker compensation, insurance and worker benefits. It also affects record keeping and requirements regarding filing requirements by both the federal and state laws (Kolender 36).

The IRS sets out some guidelines that assist in the distinction between contractors and employees. The 20 factor test is a very effective test that is used to determine whether a worker is an employee or a contractor. The 20 factors include instructions to the worker, training, integration with the business; control of assistants, continuing relationship, the set of hours a worker is required to work and the requirement of full time. The performance of the work on the employer's premises, sequence or order of work, the requirement of reports, mode of payment including expenses, provision of tools and equipment, the level of investment and realization of profits and losses are also included in the 20 factor test. Additionally, the ability to work for more than one entity, the provision of services to the general public as well as the right to discharge and terminate the relationship also assist in the distinction (Steingold 68).

A lawyer, for example, does not have to comply with instructions from the employer about where to work and how the work is to be done. The training of a lawyer is not conducted by the employer, but undertaken as a personal initiative. The services of a lawyer are not integrated into the employers business and these services are not necessarily rendered by the lawyer and can be delegated to another individual. The employment, supervision and remuneration of assistants employed by the lawyers are not controlled by the employer but by the lawyer. There is no continuing relationship between

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a lawyer and the employer and neither are there set working hours nor the requirement to work full time. The location of work is also the choice of the lawyer so is the order of the work to be done. The lawyer is not required to provide reports to the employer and payment is not done periodically, but rather on the terms of the contract. A lawyer can also work for more than one individual and can provide his or her services to the general public. A lawyer cannot be dismissed on other issues except nonperformance and where the lawyer decides to terminate the relationship at any time before the performance he is likely to incur a liability.

Conclusion

According to the 20 factor test, the issue of control is a very essential aspect in the determination of whether one is an employee or a contractor. If control can be established using any of the factors set out by the test, then the individual is likely to be an employee and where control cannot be established then the individual is a contractor (Kolender 72). A lawyer, in this regard, can be classified as an independent contractor since the element of control cannot be demonstrated using the 20 factor test.

Work cited

Kolender, E. " Employee vs Independent Contractor." NCRA 2013 annual educational conference. Vol. 39. No. 2. 2012.

Steingold, Fred S. The Employers Legal Handbook: Manage Your Employees and Workplace Effectively. Nolo, 2013.