

THE IRS 20 Questions Test 1099 vs. employee

There are many tests to determine if you are paying an independent contractor or an employee. If the IRS determines your 1099 contractor is in fact an employee you are liable for payroll taxes dating back to the time the IRS determines the contractor became an employee and all penalties for not filing in timely manner.

1. Is the person providing services required to comply with instructions about when, where, and how the work is to be done?
2. Is the person provided training to enable them to perform a job in a particular method or manner?
3. Are the services provided integrated into the business' operation?
4. Must the services be rendered personally?
5. Does the business hire, supervise or pay assistants to help the person performing the services under contract?
6. Is the relationship between the individual and the person they perform services for a continuing relationship?
7. Who sets the hours of work?
8. Is the worker required to devote their full time to the person they perform services for?
9. Is the work performed at the place of the business of the potential employer?
10. Who directs the order or sequence in which the work must be done?
11. Are regular written or oral reports required?
12. What is the method of payment - hourly, commission or by the job?
13. Are business and/or traveling expenses reimbursed?
14. Who furnishes tools and materials used in providing services?
15. Does the person providing services have a significant investment in facilities used to perform services?
16. Can the person performing the services realize both a profit or a loss?
17. Can the person providing services work for a number of firms at the same time?

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18. Does the person make their services available to the general public?
19. Is the person providing services subject to dismissal for reasons other than nonperformance of contract specifications?
20. Can the person providing services terminate their relationship without incurring a liability for failure to complete a job?

When in doubt SS-8 can be filed with the IRS and a decision will be rendered on your behalf by the IRS on whether the worker is an employee or independent contractor.