

# Worker Classification

## 1) Behavioral Control

Does the business have the **right** to direct and control how the worker does the work? More control by the business makes it more likely that the worker is an employee. The key areas for behavioral control are *instructions* and *training*. The more detailed the instructions, the more control the business exercises over the worker.

- Is the worker told only *what* should be done, rather than *how* it should be done?
- Can the worker choose where to purchase supplies and equipment, or what assistants to hire to complete the job?
- Can the worker choose what tools to use, or how, where, and when to do the work?
- What is the basis for evaluating the worker and the product? (Is the end result all that counts?)
- Is training provided or required by the business? When a business trains the worker to do a job in a particular manner, an employer-employee relationship is often indicated. If the training includes company procedures and methods, the evidence is even stronger.

## 2) Financial Control

Does the business control the financial aspects of the worker's job?

- A *significant investment* by the worker is certainly a factor, but it is not necessarily the defining one. Some mechanics and construction workers who are employees spend large amounts on tools and equipment. Some independent contractors have little invested in equipment because of the nature of their work.
- Who bears the *expenses*? Employees are not always reimbursed for expenses, but a worker who incurs a high amount of reimbursed business expenses is more likely to be an independent contractor.
- Does the worker have a *opportunity for profit or loss*? Employees are frequently paid by the unit (such as hour, week, or an amount produced), whereas independent contractors often charge a flat fee for an entire project.

## 3) Relationship of the Parties

A *written contract* stating that the worker is not an employee is not sufficient evidence per se for the IRS to accept a worker's status, but an agreement between the worker and the business can be significant if it is difficult to determine the worker's status after consideration of other facts.

- Are *employee-type fringe benefits* (such as vacation pay, insurance, and retirement plan contributions) provided to the worker?
- How long has the work relationship continued, and is it exclusive?
- Are the services provided by the worker a key aspect of the payer's normal business activity? Independent contractors generally make their services available to the market and may even advertise and maintain a business location.