Independent Contractor vs. Employee

One factor alone does not determine whether the worker is an independent contractor or employee, but rather, it is a “totality” test that determines which category the worker truly fits in.

**FACTORS TO CONSIDER:**

- **CONTROL** - Do you control (or have the right to control, whether or not you exercise that right) the direct or indirect activities of the worker?

- **SUPERVISION** - Do you provide instructions to the worker as to the method of work, versus just being interested in the result?

- **TERMINATION** - Do you have the right to discharge the worker at-will without cause? Does the worker have the right to quit, or end the relationship with you?

- **DISTINCT OCCUPATION OR BUSINESS** - Is the worker engaged in a distinct occupation from your own, and is that work not a vital part of your regular business?

- **TRAINING** - Do you provide training as to the methodology of completing the task?

- **HOURS** - Does the worker have the ability to set his/her hours of work? Does the worker have to devote a majority of the work day to providing services to you, or do they have time to work for others as well?

- **LOCATION** - Does the worker provide the services on the employer’s premises, or does the worker decide where to complete the work?

- **METHOD OF PAYMENT** - Do you pay the worker by the job or on a straight commission, rather than by the hour, week, or month?

- **EQUIPMENT AND FACILITIES** - Has the worker invested in his or her own equipment or facilities?

- **INDUSTRY PRACTICE** - Does your particular industry have a custom or practice in classifying certain workers as independent contractors or employees?