

EXHIBIT 1

20 COMMON LAW FACTORS

1. Instructions

A person who is required to comply with instructions about when, where, and how the work is to be done is ordinarily an employee. Some highly proficient employees may work without receiving instructions and can be trusted to work to the best of their abilities; however, the control factor is present if the employer has the right to instruct. The instructions may be oral or written procedures which detail not only the results required but the manner and means by which the results are to be accomplished.

2. Training

Training personnel by having an experienced individual working with them, by correspondence, or by requiring attendance at meetings indicates that the employer wants the services performed in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchaser of their services.

3. Integration

When the success or continuation of a business depends appreciably upon the performance of certain services, the person who performs those services must necessarily be subject to a certain amount of control by the owner of the business. In applying the integration test, first determine the scope and function of the business and then decide whether the services of the individual are merged into it.

4. Service Rendered Personally

If the services must be rendered personally, this requirement indicates that the employer is interested in methods as well as results. The employer is interested not only in getting a desired result, but also in who does the job. Lack of control may be indicated when an individual has the right to hire a substitute without the employer's knowledge.

5. Hiring, Supervising, and Paying Assistants

Hiring, supervising, and paying the wages of assistants by an employer generally shows control over all individuals on a job. Sometimes the employer may designate one worker to hire, supervise, and pay other workers. This individual may be acting as an employee and a representative of the employer. However, a person who agrees to provide material and labor under a contract which binds that person to attain a result is an independent contractor.

6. Continuing Relationship

A continuing relationship between an individual and the person for whom services are performed usually indicates employer-employee relationship. Continuing services may include work performed at frequently recurring though somewhat irregular intervals, either on call of the employer or whenever the work is available. If the arrangement contemplates continuing or recurring work, the relationship is considered permanent, even though the services are part-time, seasonal, or of short duration.

7. Set Hours of Work

Establishing set hours of work by the employer is a factor indicating control. This condition bars the workers from being masters of their own time, which is the right of an independent contractor. If the occupation makes fixed hours impractical, a requirement that the workers work at certain times is an element of control.

8. Full-Time Required

If the workers must devote full-time to the business of the employer, they are restricted from doing other work. On the other hand, independent contractors are free to work when and for whom they choose. "Full-time" does not necessarily mean an 8-hour day or a 5-day week. Its meaning may vary with the intent of the parties and the nature of the occupation. Full-time services may be required even though not specified orally or in writing. Do not place too much weight on the statement that a worker is not required to work full-time and may work for others.

9. Doing Work on Employer's Premises

Doing the work on the employer's premises implies that the employer has control, especially if the work could be done elsewhere. A person working in the employer's place of business is physically within the employer's direction and supervision, while work done off premises indicates some freedom from control. Often the employer will point to the fact that the worker performs the services off the premises, but this fact does not mean that the worker is not an employee. There is control when the employer has the right to direct a person to travel a designated route, to canvass a territory, to service individuals in a specified area, or to work at specified places at certain times. In some occupations services must be performed away from the premises of the employers.

10. Order or Sequence Set

The employer has control if the workers are not free to follow their own pattern of work, but must perform the services in the order set by the employer. Often because of the nature of an occupation, the employer either does not set the order of the services or sets them infrequently; however, it is sufficient to show control if the employer retains the right to do so.

11. Oral or Written Reports

The requirement for oral or written reports indicates control in that the workers are compelled to account for their actions. Lack of this reporting factor should be given little weight if supervision is so close that reports are unnecessary to establish how an individual is performing. A report which is the final product must be distinguished from "reporting" to the employee on the status of the job.

12. Method of Payment

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of doing a job. The payment by a firm of regular amounts at stated intervals to a worker strongly indicates an employer-employee relationship. The firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that to protect its investment, the firm has the right to direct and control the performance of the worker. Obviously, the firm expects the worker to give a day's work for a day's pay.

13. Payment of Business or Traveling Expenses

If the employer pays the worker's expenses, the worker is ordinarily an employee, since the employer must retain the right to regulate and direct the worker's business activities in order to properly control expenses.

14. Furnishing Tools and Materials

If an employer furnishes tools and materials, an employer-employee relationship tends to exist. Such an employer can determine which tools the person is to use and, to some extent, in what order and how they shall be used.

15. Significant Investment

Investment by a person in facilities used in performing services for another is a factor which tends to establish an independent contractor status. On the other hand, lack of investment indicates dependence on the employer for such facilities and, accordingly, the existence of an employer-employee relationship.

In general, facilities include equipment or premises necessary for the work as distinguished from education, training, and experience, but does not include tools, instruments, clothing, etc., commonly provided by employees as a common practice in their particular trade.

16. Working for More Than One Firm at a Time

Persons who work for a number of individuals or firms at the same time are generally independent contractors because they are usually free from control by any of the firms. It is possible, however, for a person to work for a number of individuals or firms and be an employee of one or all of them.

17. Making Services Available to General Public

Individuals who make services available to the general public are usually independent contractors.

1. Do these individuals have a separate office?
2. Do they have employees?
3. Are they listed in the yellow pages?
4. Do they advertise in newspapers, trade journals, T.V. or radio?
5. Do they have letterhead and/or business cards?
6. Do they obtain business licenses or permits?

18. Right to Discharge

The right to discharge is an important factor indicating that the person possessing the right is an employer. The employer exercises control through the ever-present threat of dismissal. An independent contractor, on the other hand, cannot be fired so long as he or she produces a result that meets his/her contract specifications.

19. Right to Terminate

An employee has the right to end his relationship with an employer at any time without incurring liability. On the other hand, an independent contractor agrees to complete a specific job and is responsible for its satisfactory completion.

20. Realization of Profit or Loss

Persons who can realize a profit or suffer a loss as a result of their services are generally independent contractors, while persons who cannot do so are employees. "Profit or loss" implies the use of capital by a person in an independent business. Opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.

Whether a profit is realized or loss is suffered generally depends upon management decisions. In other words, individuals responsible for a profit or loss can use their own ingenuity, initiative, and judgment in conducting a business. The absence of the opportunity for profit or loss may be shown by one or more of a variety of circumstances, such as:

- a. The worker or assistant hires help.
- b. The worker owns an office, equipment, materials, or other work facilities.
- c. The worker has continuing and recurring business liabilities or obligations.
- d. The worker performs specific jobs for prices agreed upon in advance and has to pay expenses incurred in connection with the specific jobs.
- e. The services performed by the worker builds or destroys his reputation in the community to the degree his services affect the reputation of another.