

Uniforms worn by police officers, firefighters, nurses, bus drivers and railway workers have been held to meet this two-part test [Rev. Rul. 70-474, CB 1970-2, 34], as have professional ballplayers' uniforms [Rev. Rul. 70-476, CB 1970-2, 35] and commercial

fishermen's protective clothing [Rev. Rul. 55-235, CB 1955-1, 274]. But work clothing worn by painters (white shirts, caps, bib overalls and work shoes) did not qualify even though the clothing was required to be worn by a union [Rev. Rul. 57-143, CB 1957-1, 89].

Employee or Independent Contractor? Here's the 20-Factor Common Law Test

In the coming year, the IRS will be stepping up its crackdown on the misclassification of employees as independent contractors. Back in September, the General Accounting Office reported that at least \$1.6 billion of tax revenue has been lost due to such misclassification. Result: The IRS is launching a computerized program to match income reported on information returns of independent contractors (Forms 1099) with income that they report on their individual income tax returns.

Under current law, an employer that has a reasonable basis for classifying a worker as an independent contractor is safe because the IRS is restricted from requiring an employer to reclassify a worker as an employee. But if the IRS is given legislative authority to require this reclassification (as the GAO is urging Congress to provide), the IRS will be free to begin penalizing employers that have been misclassifying workers.

PUT YOUR PEOPLE TO THE TEST► To help you decide whether workers are employees or independent contractors, here's a list of the 20 common law factors that the IRS uses to decide employment status. Keep in mind that a worker need not meet all or even most of these tests to be deemed an employee. And these tests can be subjective. For example, certain factors may not apply in some cases, or the IRS may give more weight to a certain factor depending on the worker's occupation or other circumstances.

Workers Are Generally Employees If They:

1. Must comply with employer's instructions about the work.
2. Receive training from or at the direction of the employer.
3. Provide services that are integrated into the business.
4. Provide services that must be rendered personally.
5. Hire, supervise, and pay assistants for the employer.

6. Have a continuing working relationship with the employer.

7. Must follow set hours of work.

8. Work full-time for an employer.

9. Do their work on the employer's premises.

10. Must do their work in a sequence set by the employer.

11. Must submit regular reports to the employer.

12. Receive payments of regular amounts at set intervals.

13. Receive payments for business and/or travel expenses.

14. Rely on the employer to furnish tools and materials.

15. Lack a major investment in facilities used to perform the service.

16. Cannot make a profit or suffer a loss from their services.

17. Work for one employer at a time.

18. Do not offer their services to the general public.

19. Can be fired by the employer.

20. May quit work at any time without incurring liability.

STILL NOT SURE?► These tests focus on the degree of control the employer has over the worker. But as we said, they can still be subjective. If, after examining these factors, you're still not sure if a worker is an employee or not, you can file the four-page Form SS-8 (Information for Use in Determining Whether a Worker Is an Employee for Federal Employment Taxes and Income Tax Withholding) with the IRS to request an official determination. You can get the SS-8 from your IRS District Director or local IRS office. If you are using the SS-8 to determine the status of a class of workers, complete it for one worker who is representative of the class. File a separate SS-8 for each classification of workers.