

# Help with Properly Classifying Workers

## How To Determine Independent Contractor Status under the New Employment Standard Effective December 31, 2012

- Step 1:** Is the individual free from direction or control of the employing unit?
- No: Stop. The individual is an employee, not an independent contractor.  
Yes: Move to step 2.
- Step 2:** Does the individual have the essential right to control the means and progress of the work except as to final results?
- No: Stop. The individual is an employee, not an independent contractor.  
Yes: Move to step 3.
- Step 3:** Is the individual customarily engaged in an independently established trade, occupation, profession or business?
- No: Stop. The individual is an employee, not an independent contractor.  
Yes: Move to step 4.
- Step 4:** Does the individual have the opportunity for profit and loss as a result of the services being performed for the other individual/entity?
- No: Stop. The individual is an employee, not an independent contractor.  
Yes: Move to step 5.
- Step 5:** Does the individual hire and pay his or her assistants (if any) and to the extent that these assistants are employees, supervise the details of their work?
- No: Stop. The individual is an employee, not an independent contractor.  
Yes: Move to step 6.
- Step 6:** Does the individual make his or her services available to some client or customer community even if their right to do so is voluntarily not exercised or is temporarily restricted?
- No: The individual is an employee, not an independent contractor.  
Yes: Move to step 7.

**Step 7:** Determine if the individual meets any three (3) of the following elements:

- The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by the individual to complete the work.
- The individual is not required to work exclusively for the other individual/entity.
- The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.
- The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual/entity prior to completion of the work.
- Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual.
- Such work is outside the usual course of the business for which the services is performed.
- The individual has an IRS Determination (SS-8) of independent contractor status.

**IF the individual meets fewer than three (3) elements, STOP. The individual is an employee, not an independent contractor.**

**IF the individual meets three (3) or more elements; the individual is an independent contractor.**

