



---

## **Subject: 10 Tips on Drafting an Independent Contractor Agreement**

So you have carefully reviewed your Company's business relationship with a worker, and have concluded that the worker can be treated and paid as a self-employed independent contractor. It is now VERY IMPORTANT that you draft a written "independent contractor agreement" in which you "spell out" the many provisions which strengthen your position that the worker is indeed an "independent contractor".

### **Here are 10 tips to help you draft an effective agreement:**

- **Names and Titles** – An agreement - labeled as an independent contractor or consulting agreement should state that the person is performing services as an independent contractor. Avoid employee-sounding nomenclature.
- **Instructions and training** – A worker required to comply with an employer's instructions about when, where, and how to perform a job is often an employee. Training workers and requiring meetings may indicate that the employer wants services performed a particular way, so distinguish between existing skills and those taught by the employer.
- **Control** – Allowing workers to delegate duties tends to support independent contractor status. The agreement should specify that any assistants must be hired, supervised, and paid by the independent contractor.
- **Duration and hours** – There is no limit on contract duration, but shorter is better. An ongoing 20-year relationship with 20 annual renewals may not present a persuasive argument for independence. Hours set by the employer also suggest employee status, but putting scheduling in the worker's hands can help to support independent contractor status.
- **Full time and exclusivity** – The agreement should make clear whether full-time work is required. An alternative to full time might be to set a deadline for a final product. An exclusivity requirement hurts independent contractor status, while a lack of exclusivity helps even if the worker does not choose to work for another employer. No one factor controls the situation.
- **Work site and reports** – Work performed on the employer's premises suggest control, especially if it could be done elsewhere. Where possible, the agreement should allow the contractor to determine where to work. Reports can also be telling, so try not to require periodic oral or written reports.

- **Payments and expenses** – Payment by the hour, week, or month generally suggests an employer-employee relationship, provided it is not merely a convenient way to pay a fixed sum for a job. A lump sum or progress payments are better than hourly, weekly, or monthly payments. Avoid reimbursements for expenses, which may suggest an employer-employee relationship. Such provisions should be clearly noted in the agreement.
- **Equipment and investment** – A person providing his own equipment, tools, and supplies is more likely to be an independent contractor, but be specific what tools and equipment you mean. Having an independent contractor bear his own costs tends to support his independence.
- **Profit of Loss** – If a worker risks economic loss because of investment or liability for expenses, it suggests independence. In drafting an agreement, avoid financial safety nets that preclude workers from experiencing losses. Workers who make their services available to the general public seem independent, so consider allowing the worker to advertise.
- **Discharge and termination** – The right to discharge a worker generally suggests that the worker is an employee. An independent contractor agreement may include detailed termination provisions that do not allow the contractor to terminate the arrangement at any time without liability. One model is payment for a finished product, with termination geared to a percentage of completion.

### **In Conclusion:**

**Although drafting a contract is a challenge, a good agreement can help secure independent contractor relationships. But keep in mind that no matter how thoroughly an agreement is drafted, it is not entirely safe from recharacterization.**

**Call AccuPay at 885-7600 if you have questions about this subject matter.**

PayDay is an email communication of payroll news, legal updates and tax considerations intended to inform clients and colleagues of AccuPay about current payroll issues and planning techniques. You should consult with your CPA or tax advisor before implementing any ideas, comments or planning techniques.