



HOTLINE HANDLES LABOR & EMPLOYMENT QUESTIONS!

Don't forget that your MPA membership includes hotline services including labor & employment answers and counseling. One area we are seeing a lot of questions on is independent contractors. Here's some helpful information to get you started. Further questions can be directed to the hotline.

Independent Contractors

As of January 1, 2013, the Michigan legislature enacted a 20-factor test to determine if an employer/employee relationship exists for workers' compensation liability. The 20-factors are:

- 1. INSTRUCTIONS:** If your business requires the contractor comply with its instructions about when, where and how the service is to be done, the contractor could be considered an employee.
- 2. TRAINING:** If your business requires that the contractor perform the job in a particular manner then the contractor could be considered an employee. An independent contractor will use his/her own methods to complete the agreed upon service and should receive no training from your business.
- 3. INTEGRATION:** If the services performed by the contractor are an important part of your business operation then the contractor could be considered an employee. The integration of the two businesses indicates that the contractor is subject to your direction or control.
- 4. SERVICES RENDERED PERSONALLY:** If the contractor is required to perform the service personally is an indication that contractor is an employee since an independent contractor is free to assign work to his/her own employees if necessary.
- 5. HIRING, SUPERVISION AND PAYING ASSISTANTS:** If the business allows the contractor to hire, supervise or pay assistants for the business, the contractor is likely to be deemed an employee unless the contract specifies that the contractor will hire and supervise others as part of the contract.
- 6. CONTINUING RELATIONSHIP:** If the business and contractor have an ongoing relationship for the service provided, the contractor could be considered an employee. The IRS has held that even irregular recurring jobs would qualify as an employment relationship.
- 7. SET HOURS OF WORK:** If the business requires the contractor to work a set number of hours, the contractor could be considered an employee since an independent contractor sets his/her own schedule.
- 8. FULL TIME REQUIRED:** If the business requires the contractor to work substantially full time for the business, the contractor will likely be considered an employee since an independent contractor is typically free to work when and for whom he or she chooses.
- 9. WORK DONE ON PREMISES:** If the business requires that the services being performed are completed on the business' premises, the contractor could be considered an employee, especially if the service could be performed elsewhere.



10. ORDER OR SEQUENCE TEST: If the business requires that the service be performed in a certain order, the contractor could be considered an employee since the independent contractor should be allowed to perform the services in whatever order he/she deems appropriate.

11. ORAL OR WRITTEN REPORTS: Any contractor required to submit regular reports would suggest an employee relationship since it is a method of controlling the contractor.

12. PAYMENTS BY THE HOUR, WEEK OR MONTH: Payment of wages by a set schedule would suggest an employment relationship since independent contractors are traditionally paid by the job and/or commission.

13. PAYMENT OF BUSINESS AND/OR TRAVELING EXPENSES: If the business pays the contractor's expenses, the contractor would be considered an employee.

14. FURNISHING TOOLS AND MATERIAL: If the business provides the tools and material necessary for the contractor to complete the service, the contractor would likely be considered an employee.

15. SIGNIFICANT INVESTMENT: If the contractor maintains his or her own office, no employment relationship would be presumed.

16. PROFIT OR LOSS: If the contractor can realize a profit or loss by his or her services, then no employment relationship would be presumed.

17. WORKING FOR MORE THAN ONE FIRM AT A TIME: If the contractor performs more than de minimis services for other businesses then no employment relationship would be presumed.

18. MAKING SERVICE AVAILABLE TO THE GENERAL PUBLIC: If the contractor makes his or her services available to the public on a regular or consistent basis then no employment relationship would be presumed.

19. RIGHT TO DISCHARGE: If the business has the right to discharge the contractor, then an employment relationship could be established. A business' right to end the relationship with an independent contractor is typically controlled by the terms of the contract.

20. RIGHT TO TERMINATE: If the contractor has the right to terminate the relationship with the business without incurring liability, then an employment relationship could be established.

CONTACT THE HOTLINE TEAM AT

Email: lisa@michiganpress.org

Hotline Phone: 517.372.2424

