

WORKER LAST NAME:
WORKER FIRST NAME:

Information Regarding the Hiring of Independent Contractors

From IRS Publication, Topic 762 – Independent Contractor vs. Employee:

In the United States, a business must generally withhold federal income taxes, withhold and pay social security and Medicare taxes, and pay unemployment tax on wages paid to an employee.

A business does not generally have to withhold or pay any taxes on payments to independent contractors.

To determine whether a worker is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. When making this decision, all evidence of control and independence in the relationship should be documented and considered, e.g., behavioral control, financial control, and the type of relationship.

Behavioral Control covers facts that demonstrate whether the business has the right to direct or control how the work is done through instructions, training, or other means.

Financial Control covers facts that show whether the business directs or controls the financial and business aspects of the worker's job. This examines un-reimbursed business expenses, investment in the facilities used, the extent to which the worker is available to the marketplace, how the worker is paid, and whether or not the worker can realize a profit or incur a loss.

The **type of relationship** covers facts that demonstrate how the parties perceive their relationship, e.g., the extent to which the services performed by the worker are a key aspect of the regular business of the company, the permanency of the relationship, whether the business supplies benefits, the extent to which the worker is available to perform services for other businesses, and written contracts that describe the relationship.

What follows are two lists. The first is a list of 20 questions based in common law that the US Internal Revenue Service uses to determine if a worker is an independent contractor or employee. They have been adapted to be IEEE-specific. The second, shorter list includes questions that IEEE must ask to be in compliance with Section 4958 of the Internal Revenue Code.

WORKER LAST NAME:
WORKER FIRST NAME:

Outside of the United States, the hiring manager must use the law of the appropriate country to determine if the relationship is one of employment or independent contractor. That process of information gathering and decision – making must be documented prior to any contract being executed between the IEEE or an IEEE entity (such as a section or conference) and an individual.

The IEEE hiring manager is considered to be the person most knowledgeable about the relationship between IEEE and the worker. Therefore, it is the hiring manager who must provide the full and complete information requested so that the IEEE Procurement Staff can determine the nature of the relationship between IEEE and the worker. No one should EVER sign an independent contractor agreement with a worker until the IEEE Procurement staff has made a ruling regarding the nature of the work relationship.

Please be aware that if called in to review this case, the IRS will decide whether a worker is an independent contractor or an employee on a case-by-case basis. It does not necessarily apply all factors to each case, and it does not apply equal weight to each factor.

While the IEEE may challenge its decision with the information you provide, it is the interpretation of the IRS that counts.

Please be aware that most US state jurisdictions also have laws defining the differences between an independent contractor and an employee; consequently, misclassification opens the business to fines and disciplinary actions at the state level, as well as the federal level. New Jersey, New York, California, and the District of Columbia have their own laws regarding the classification of a worker as an employee or an independent contractor, and of course, its own monetary fines for misclassification.

If the IEEE misclassifies a worker as an independent contractor and the IRS finds it had no reasonable basis for doing so, the business may be held liable for fines and employment taxes for that worker, and the manager who misclassified the worker may be opened to fines, as well.

Moreover, if the IRS rules the worker is an employee, then the obligation for benefits must be addressed.

WORKER LAST NAME:
 WORKER FIRST NAME:

Common Law Rules Used by the IRS to Determine if a Worker is an Employee or an Independent Contractor

Question based in Common Law	Yes	No	Comments / Notes
<p>1. Are the services provided by the worker a regular part of the work of the IEEE or its business operations? If no, describe the work the worker will be doing in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>2. Is the worker required to comply with IEEE instructions and directions about when, where and how the work is done? If yes, describe fully in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>3. Is the worker provided with any training by the IEEE that would enable him/her to perform a job in a particular method or manner? If yes, describe the training in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>4. Does IEEE furnish tools and materials used by the worker (e.g., computers, networks, furniture, paper, telephones,</p>			

WORKER LAST NAME:
 WORKER FIRST NAME:

<p>etc.)? If yes, describe fully in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>5. Does/will IEEE hire, supervise or pay assistants to help the worker on the job? If yes, describe fully in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>6. Must the services be rendered personally by the worker, e.g., is he or she prohibited from subcontracting the work?</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>7. Is there a continuing relationship between the worker and the IEEE or the person for whom the services are performed? If yes, describe the length of the continuing relationship in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>8. Does the IEEE or an agent of the IEEE set the work schedule and/or work timeline of the worker? If yes, describe the work schedule / work timeline in the comments/notes section.</p>			

WORKER LAST NAME:
WORKER FIRST NAME:

<p>(“Yes” may indicate an employment relationship)</p>			
<p>9. Is the work performed at the IEEE or at a specific place(s) of work set by the IEEE? If yes, provide the address where the work is performed in the comments/notes section.</p> <p>(“Yes” may indicate an employment relationship)</p>			
<p>10. Does the IEEE or an agent of the IEEE direct the sequence in which the work must be done by the worker?</p> <p>(“Yes” may indicate an employment relationship)</p>			
<p>11. Is the method of payment hourly, weekly, monthly, as opposed to by the job? If yes, describe the method of payment in the Comments/Notes section.</p> <p>(“Yes” may indicate an employment relationship)</p>			
<p>12. Are regular reports (either oral or written) required to be submitted by the worker to the IEEE? If yes, describe the nature of the reports in the comments/notes section.</p> <p>(“Yes” may indicate an employment relationship)</p>			
<p>13. Are business and/or traveling expenses reimbursed to the</p>			

WORKER LAST NAME:
 WORKER FIRST NAME:

<p>worker? If yes, please describe in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>14. Has the worker invested in equipment or facilities used to provide the services? If yes, describe his/her investment in the comments/notes section.</p> <p>("Yes" may indicate an independent contractor status)</p>			
<p>15. Does the worker perform services exclusively for the IEEE rather than working for a number of businesses at the same time? If no, describe the worker's client base in the comments/notes section.</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>16. Is the worker required to devote his/her full time to the IEEE or person for whom he/she performs services?</p> <p>("Yes" may indicate an employment relationship)</p>			
<p>17. Does the worker make his/her services regularly available to the general public? If yes, scan in his/her current business card and a current marketing brochure or other collateral material, and attach the scanned material to this</p>			

WORKER LAST NAME:
WORKER FIRST NAME:

questionnaire. ("Yes" may indicate an independent contractor status.)			
18. Is the worker subject to dismissal for reasons other than non-performance of the contract specifications? If yes, describe those reasons in the comments/notes section. ("Yes" may indicate an employment relationship)			
19. Can the worker terminate his/her relationship with the IEEE without incurring a liability for failure to complete the job? ("Yes" may indicate an employment relationship)			
20. Does the arrangement with IEEE put the worker in a position of realizing either a profit or loss on the work? ("Yes" may indicate independent contractor status)			

WORKER LAST NAME:
 WORKER FIRST NAME:

QUESTIONS THAT ALSO NEED TO BE ASKED AS PART OF IEEE DUE DILIGENCE.

DUE DILIGENCE QUESTIONS	YES	NO	COMMENTS/NOTES
1. Does this worker have a family relationship to ANY member of the board of directors, ANY member of a past board of directors, or to ANY member of the IEEE staff? If yes, identify the family member(s) by name and title in the comments/notes section.			
2. How long has this individual been supplying products and/or services (e.g., work) to the IEEE? Describe fully in the comments/notes section.			
3. Is there a written or oral contract between the IEEE and this worker? If yes, where is the original contract? Please describe in the comments/notes section.			
4. Is the worker an employee of an employment agency, association management company, or other entity? If yes, identify and include the address and telephone number, fax number, and e-mail address for that company in the comments/notes section.			

WORKER LAST NAME:
WORKER FIRST NAME:

Name of the individual answering these questions:

IEEE title of the individual answering these questions.

E-mail address for the individual answering these questions.

Work phone number for the individual answering these questions.

Name of IEEE OU or entity who will engage the worker.

Date questions were answered.

State and country in which the products/services are being provided by the worker.

If the individual is working in a country besides the US, please provide the name and contact information for local legal counsel, if any.

ATTACH:

- (1) The scanned business documentation such as client lists, business cards, collateral marketing materials**
- (2) A complete but unexecuted IEEE independent contractor agreement for procurement review; you must not execute this agreement until you have procurement staff approval that the individual worker is indeed an independent contractor; the individual worker must sign the agreement at this point; the hiring manager MUST NOT sign the agreement at this point**
- (3) Any other documentation that supports independent contractor status**