

## Independent Contractor or 1099 Test

In Accordance with the Fair Labor Standards Act, the IRS uses the following 20 questions during an audit to determine if an individual is a 1099 (independent contractor) or an actual employee. If you answer **YES** to any one of these questions you have an actual employee and can be heavily fined if you are treating them as a 1099.

- *Continuing Relationship* - Independent contractors do not have a continually working relationship with a single employer.
- *Working on More than One Contract* - Independent contractors perform services for more than one entity at the same time.
- *Availability to the general public* - Independent contractors offer their services to the general public on a regular basis.
- *Instruction* - Independent contractors do not receive instructions on how to perform and accomplish a job.
- *Training* - Independent contractors do not receive training on how to complete a job
- *Personally Rendered Services* - Independent contractors have the right to hire employees or contract with other entities to perform actual jobs.
- *Payment* - Independent contractors are paid by the job or scope of work.
- *Business Expenses* - Independent contractors are responsible for their own expenses.
- *Tools and Materials* - Independent contractors provide their own tools, materials and equipment to perform the job.
- *Work Location* - Independent contractors are free to choose where the work will be performed.
- *Controls over assistance* - Independent contractors are free to decide to hire assistance to accomplish a job and to control their work activities.
- *Work Hours and Schedule* - Independent contractors control their own hours and schedule for accomplishing results.
- *Full Time Work Requirement* - Independent contractors are free to work when and for whom they choose.
- *Required Work Order or Sequence* - Independent contractors determine the order in which they will perform the work.
- *Required Reports* - A degree of control is suggested if a worker is required to submit regular oral or written reports.
- *Investments in Facilities* - Independent contractors have a significant investment in facilities in the course of performing their job.
- *Profit or Loss* - Independent contractors realize a profit or sustain a loss, based on the success in performing their work or service.
- *Business succession or continuation* - operations or ability to be successful should not depend on the service of independent contractors.
- *Discharge Rights* - Contracts with independent contractors cannot be terminated as long as they perform services in accordance with their contract.
- *No Compensation Liability* - Independent contractors may be liable for a breach of contract if they leave without completing their work.