

## **California Test for Employment versus Independent Contractor**

To determine if a worker is an independent contractor or an employee, look at the main test and the ten secondary factors.

### **Main Test**

Does the employer have the right to direct and control the manner and means in which the worker carries out the job? The right of direction and control, whether or not exercised, is the most important factor in determining an employment relationship. The right to discharge a worker at will and without cause is strong evidence for the right of direction and control. When it is not clear whether you have the right to direct and control the worker, you must look further into the actual working relationship by weighing the ten secondary factors.

### **Secondary Factors**

Depending on the type of relationship and the services performed, each factor varies in importance. Consider each factor independently, then consider them as a whole:

1. Is the worker engaged in a distinct trade or occupation? Does the worker make his or her services available to the general public? Does the worker perform work for more than one firm/company at a time? Does the worker hire, supervise, or pay assistants? Does the worker have a substantial investment in equipment and facilities?
2. Is the work done without supervision? In the geographic area and in the occupation, is the type of work usually done under the direction of a principal without supervision?
3. Is the work highly skilled and specialized? Is the worker trained by the principal? Does the worker personally perform the services?
4. Does the principal furnish/provide the tools, equipment, materials, supplies, and place of work? Does the worker perform the services on the principal's business premises?
5. Are the services provided on a long-term or repetitive basis?
6. Method of payment - Is the worker paid based on time worked or on completion of the project?
7. Are the services an integral part of the principal's business?
8. What type of relationship do the parties believe they are creating?
9. What is the extent of actual control by the principal? Does the worker have the right to terminate the relationship without liability? Does the principal provide instructions on how to do the work? Does the principal establish the work hours or the number of hours to be worked? Does the principal require the work to be done in a particular order or sequence? Does the principal require oral or written reports from the worker?
10. Is the work performed for the benefit of the principal's business?

Certain categories of workers, including corporate officers, are considered by law to be statutory employees.