

**Form SS-8 Questions
Related to Three Categories of Evidence and Twenty Common Law Factors**

- Part 1 Q-8: Describe the work done by the worker and provide the worker's job title.
- Part 1 Q-9: Explain why you believe the worker is an employee or an independent contractor.
- Part 1 Q-10: Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request? Dates and difference between current work and prior work?
- Part 1Q-11: If the work is done under a written agreement between the firm and the worker. Describe the terms and conditions of the work arrangement.

BEHAVIORAL CONTROL

Part 2 Q-1: What specific training and/or instruction is the worker given by the firm?

- INSTRUCTIONS. A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the RIGHT to require compliance with instructions.
- TRAINING. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

Part 2 Q-2: How does the worker receive work assignments?

Part 2 Q-3: Who determines the methods by which the assignments are performed?

Part 2 Q-4: Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution?

Part 2 Q-5: What types of reports are required from the worker?

Part 2 Q-8: Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings).

- ORDER OR SEQUENCE SET. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.
- ORAL OR WRITTEN REPORTS. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

Part 2 Q-6: Describe the worker's daily routine such as his or her schedule or hours.

- SET HOURS OF WORK. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.
- FULL TIME REQUIRED. If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other

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gainful work. An independent contractor on the other hand, is free to work when and for whom he or she chooses.

Part 2 Q-7: At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one.

→ **DOING WORK ON EMPLOYER'S PREMISES.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

Part 2 Q-9: Is the worker required to provide the services personally?

Part 2 Q-10: If substitutes or helpers are needed, who hires them?

Part 2 Q-11: If the worker hires the substitutes or helpers, is approval required? If "Yes," by whom?

Part 2 Q-12: Who pays the substitutes or helpers?

Part 2 Q-13: Is the worker reimbursed if the worker pays the substitutes or helpers? If "Yes," by whom?

→ **SERVICES RENDERED PERSONALLY.** If the Services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

→ **HIRING, SUPERVISING, AND PAYING ASSISTANTS.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.

FINANCIAL CONTROL

Part 3 Q-1: List the supplies, equipment, materials, and property provided by each party:
The firm; The worker; Other party:

→ **FURNISHING OF TOOLS AND MATERIALS.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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Part 3 Q-2: Does the worker lease equipment, space, or a facility? If “Yes,” what are the terms of the lease?

Part 3 Q-3: What expenses are incurred by the worker in the performance of services for the firm?

→ **SIGNIFICANT INVESTMENT.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

Part 3 Q-4: Specify which, if any, expenses are reimbursed by:
The firm: Other party:

→ **PAYMENT OF BUSINESS AND/OR TRAVELING EXPENSES.** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

Part 3 Q-5: Type of pay the worker receives: (Salary, Commission, Hourly Wage, Piece Work, Lump Sum, Other) If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount.

Part 3 Q-6: Is the worker allowed a drawing account for advances? If “Yes,” how often? Specify any restrictions.

→ **PAYMENT BY HOUR, WEEK, MONTH.** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

Part 3 Q-7: Whom does the customer pay? If worker, does the worker pay the total amount to the firm?

Part 3 Q-8: Does the firm carry workers' compensation insurance on the worker?

Part 3 Q-9: What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)?

Part 3 Q-10: Does the worker establish the level of payment for the services provided or the products sold? If “No,” who does?

→ **REALIZATION OF PROFIT OR LOSS.** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services,

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however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

RELATIONSHIP OF THE PARTIES

Part 4 Q-1: Benefits available to the worker: Paid Vacation; Sick Pay; Paid Holidays; Personal Days; Pensions; Insurance benefits; Bonuses; Other.

→ CONTINUING RELATIONSHIP. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. See *United States v. Silk*.

Part 4 Q-2: Can the relationship be terminated by either party without incurring liability or penalty? If "No," explain your answer.

→ RIGHT TO DISCHARGE. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

→ RIGHT TO TERMINATE. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Part 4 Q-3: Did the worker perform similar services for others during the time period entered in Part I, line 1? If "Yes," is the worker required to get approval from the firm?

Part 4 Q-4: Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period.

Part 4 Q-5: Is the worker a member of a union?

Part 4 Q-6: What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable.

→ MAKING SERVICE AVAILABLE TO GENERAL PUBLIC. The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

→ WORKING FOR MORE THAN ONE FIRM AT A TIME. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

Part 4 Q-7: If the worker assembles or processes a product at home, who provides the materials and instructions or pattern?

Part 4 Q-8: What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)?

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Part 4 Q-9: How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services?

Part 4 Q-10: If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)?

→ INTEGRATION. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.