

Scope of Work – Guidance for distinguishing independent contractors from employees

There are three key factors to consider when determining independent contractor status:

Behavioral Control, Financial Control, and Relationship of the Parties. No single factor determines the status; rather, the totality of the circumstances must be considered.

Behavioral Control: *Is there a right to direct or control how the worker does the work?*

A worker is an employee when the hiring business has the *right* to direct and control the worker regardless of whether the business actually does direct or control the way the work is done.

Financial Control: *Is there a right to direct or control the business part of the work?*

A worker may be an independent contractor if s/he has significant financial investment in his/her work, is not reimbursed for some or all business expenses, can realize a profit or incur a loss, and makes his/her services available to the relevant market.

Relationship of the Parties: *How do the hiring business and the worker view their relationship?*

A written contract may show what both parties intend. If the worker receives employee benefits s/he may be an employee. If there is an expectation that the relationship will continue indefinitely, this indicates intent to create an employer-employee relationship.

The IRS is more likely to classify as an **INDEPENDENT CONTRACTOR** a worker who:

- can earn a profit or suffer a loss from the activity
- furnishes the tools and materials needed to do the job
- is paid by the job
- works for more than one client company at a time
- makes his/her services available to the relevant market
- invests in equipment and facilities used to provide the services
- pays his or her own business and traveling expenses incurred while working for the hiring entity
- hires and pays assistants
- sets his or her own working hours

The IRS is more likely to classify as an **EMPLOYEE** a worker who:

- receives instructions covering when, where and how to do the work from the hiring company
- receives training about required procedures and methods from the hiring company
- works full time for the hiring company and does not make his/her services available to the relevant market
- receives employee benefits
- has the right to quit without incurring liability
- provides services that are a key aspect of the hiring company's day-to-day operations
- can be fired at any time by the hiring company
- is paid by the hour

The required Scope of Work form can be found at the Procurement Service Center (PSC) website at <http://www.cusys.edu/psc/forms/sow-individ.xls>