**Employee vs. Independent Contractor Checklist**

To determine whether a worker that you have hired is an employee or as an independent contractor (“I/C”), many factors must be considered. Go through this checklist and consider, for each of the questions, whether the worker you hired is more likely to be an I/C or an employee. If your answer leans towards I/C put a check in the checkbox. It is important to note that the law presumes that the worker is your employee and not an I/C. So, in order to feel comfortable that the worker would be deemed an I/C, you would want to have checks in most of the checkboxes.

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* **Does the employer control or have the right to control when the worker performs the work?**
  + Employer does not have much control, more likely to be I/C
  + Employer has a lot of control, more likely to be employee
* **Does the employer control or have the right to control where the worker performs the work?**
  + Worker controls the location, more likely to be I/C
  + Employer controls the location, more likely to be employee
* **Does the employer control or have the right to control what work is being performed by the worker or how the worker performs the work?** 
  + Employer does not have much control, more likely to be I/C
  + Employer has a lot of control, more likely to be employee
* **Does the work require a lot of special skill?**
  + More skill required, more likely to be I/C
  + Less skill required, more likely to be employee
* **Does the employer provide the instruments and tools?**
  + Worker brings own instruments and tools, more likely to be I/C
  + Employer provides instruments and tools, more likely to be employee
* **How long is the duration of work relationship?**
  + Short work relationship, more likely to be I/C
  + Long work relationship, more likely to be employee
* **Can the employer add new projects/assignments?**
  + Cannot add projects/assignments without consent of worker, more likely to be I/C
  + Can add project/assignments, more likely to be employee
* **Is the employer involved in hiring and paying assistants for the worker?**
  + Employer has no role, more likely to be I/C
  + Employer has a role, more likely to be employee
* **Is the worker’s work a regular part of the employer’s business?**
  + Worker’s work is not a regular part of employer’s business, more likely to be I/C
  + Worker’s work is a regular part of employer’s business, more likely to be employee
* **Does the worker receive employee benefits from the employer?** 
  + Worker does not receive employee benefits from employer, more likely to be I/C
  + Worker receives employee benefits from employer, more likely to be employee
* **Is there a written I/C agreement?** 
  + Written agreement says I/C relationship, more likely to be I/C
  + No written agreement or written agreement says employee-employer, more likely to be employee
* **How is the worker paid?**
  + Worker is paid a flat fee, project rate or other non-salary or hourly wage, more likely to be I/C
  + Worker is paid a salary or hourly wage, more likely to be employee
* **What is the tax treatment of the worker?**
  + Worker receives tax form 1099, more likely to be I/C
  + Worker receives tax form W-2, more likely to be employee