



## Robert W. Wood

THE TAX LAWYER

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### IRS Provides Template For Employee vs. Contractor Mess

Determining who is a **true** independent contractor and who is **really** an employee involves more than labels. The IRS, Department of Labor, state labor and employment boards, unemployment insurance and worker's compensation authorities **all investigate** this. It also comes up in private lawsuits over benefits, liability, and more. See [Winning Independent Contractor Battles](#).



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The IRS recently issued a template focused on evaluating your **own** status. In [IRS Publication 1779](#), the IRS looks at three areas: behavioral control; financial control; and the relationship of the parties to determine worker classification.

**Behavioral Control.** A worker is an employee when the business has the right to direct and control the worker. The business does not have to **actually** direct or control the way the work is done—as long as the employer has the **right** to direct and control the work.

- **Instructions.** If you receive extensive instructions on how work is to be done, this suggests you are an employee. Instructions can cover a wide range of topics, such as:

1. How, when, or where to do the work;
2. What tools or equipment to use;
3. What assistants to hire to help with the work; and
4. Where to purchase supplies and services.

If you receive less extensive instructions about **what** should be done, but not **how** it should be done, you may be an independent contractor. For instance, instructions about time and place may be less important than directions on **how** the work is performed.

- ***Training.*** If the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way

**Financial Control.** These facts show whether there is a right to direct or control the business part of the work. Consider:

- ***Significant Investment.*** If you have a significant investment in your work, you may be an independent contractor. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.
- ***Expenses.*** If you are not reimbursed for some or all business expenses, then you may be an independent contractor, especially if your unreimbursed business expenses are high.
- ***Opportunity for Profit or Loss.*** If you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an independent contractor.

**Relationship of the Parties.** These facts illustrate how the business and the worker their relationship. For example:

- ***Employee Benefits.*** If you receive benefits, such as insurance, pension, or paid leave, this is an indication that you may be an employee. If you do not receive benefits, however, you could be either an employee or an independent contractor.

- ***Written Contracts.*** A written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts. See [Ten Tips for Drafting Independent Contractor Agreements](#).

For more, see:

[Failing To Pay Employment Taxes Means Personal Liability](#)

[Don't Send Money For Worker Status Amnesty!](#)

[California's Tough New Independent Contractor Law](#)

[IRS Won't Tell States Worker Status Amnesty Details](#)

[IRS Summons? Meet John Doe](#)

[States Start Conforming To IRS Independent Contractor Amnesty](#)

[Drafting Independent Contractor Agreements](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*