

**INDEPENDENT CONTRACTOR OR EMPLOYEE/EMPLOYER RELATIONSHIP
DUE DILLIGENCE QUESTIONS:**

1. Is the worker a former employee of the corporation? If so, is the worker performing the same functions he/she performed as an employee?

If yes, this indicates that the worker is an employee, unless there has been a long hiatus following the period of employment.

2. Does the worker have a business structure:

a) Is the worker's business incorporated?

If yes, this indicates that the worker is an independent contractor.

b) Does the worker's business advertise?

If yes, this indicates that the worker is an independent contractor.

c) Does the worker's business have business cards?

If yes, this indicates that the worker is an independent contractor.

d) Does the worker's business have a separate telephone listing?

If yes, this indicates that the worker is an independent contractor.

e) Is the worker's business in business directory listing?

If yes, this indicates that the worker is an independent contractor.

f) Does the worker maintain office space outside of the corporation's premises?

If yes, this indicates that the worker is an independent contractor.

g) Does the worker have employees of his or her own?

If yes, this indicates that the worker is an independent contractor.

2) Is there a written agreement between the corporation and the worker:

a) Does it characterize the relationship as an employment relationship?

If yes, this indicates that the worker is an employee.

b) Does it characterize the relationship as a relationship between two independent contractors?

If yes, this indicates that the worker is an independent contractor.

3) What is the frequency of the worker's relationship with the corporation?

If the worker works for the corporation on a frequent or regular basis, this indicates that the worker is an employee.

4) What is the length of the relationship?

If the worker works only for the corporation, for a period in excess of 3-4 months, this indicates that worker is an employee.

5) Is the worker free to supply similar services to other corporations when the worker is not actually performing services for the corporation?

If yes, this indicates that the worker is an independent contractor.

6) Does the worker actually provide services to other corporations (especially competitors)?

If yes, this indicates that the worker is an independent contractor.

7) Can the worker provide a substitute if the worker is away, e.g. sick or working for another business?

If yes, this indicates that the worker is an independent contractor.

8) Does the corporation provide training to the worker?

If yes, this indicates that the worker is an employee.

9) (a) Does the corporation supply the worker's tools or equipment or does the worker have his or her own tools, e.g. relevant tools of the trade?

If the corporation provides equipment, etc., this indicates that the worker is an employee; if worker provides equipment etc., this indicates that the worker is an independent contractor.

(b) If the corporation supplies the equipment to the worker, does the corporation charge the worker for use of any equipment or office space provided by the corporation?

If yes, this indicates that the worker is an independent contractor.

10)What degree of control over the manner of work performed by the worker does the corporation exercise:

a) Does the corporation control what is to be done?

If yes, this indicates that the worker is an employee.

b) Does the corporation control when it is to be done?

If yes, this indicates that the worker is an employee.

c) Does the corporation control where it is to be done?

If yes, this indicates that the worker is an employee.

d) Does the corporation control the manner or method in which the work is performed?

If yes, this indicates that the worker is an employee.

e) Does the corporation provide an (annual or regular) assessment of the work or the worker's performance?

If yes, this indicates that the worker is an employee.

11)Does the corporation determine the worker's hours of work?

If yes, this indicates that the worker is an employee.

12)Does the corporation determine the worker's days of work?

If yes, this indicates that the worker is an employee.

13)Does the corporation determine the worker's work location?

If yes, this indicates that the worker is an employee.

14)Where does the worker perform the work?

If on the corporation's premises this indicates that the worker is an employee?

15)Does the worker have an office or other designated work station at the corporation's premises?

If yes, this indicates that the worker is an employee.

16) Do the corporation's employees perform work which is the same or similar to services supplied by the worker?

If yes, this indicates that the worker is an employee.

17) Does the worker provide a service which is integrated in the overall business of the corporation, e.g. leading to the production of the corporation's end product?

If yes, this indicates that the worker is an employee.

18) Does the corporation include the worker in its pay equity plan?

If yes, this indicates that the worker is an employee.

19) Does the worker participate in the corporation's employee benefits plan?

If yes, this indicates that the worker is an employee.

20) Does the worker contribute to the corporation's pension plan?

If yes, this indicates that the worker is an employee.

21) What is the form of compensation, i.e. a fixed or variable rate?

If compensation is based on the task/project or some factor other than time, this indicates that the worker is an independent contractor (because it provides for greater opportunity for profit)

22) How is the worker's time recorded by the corporation?

If the worker has to sign in/punch in on daily basis to be approved by the corporation, this indicates that the worker is an employee.

23) Does the worker invoice the corporation?

If yes, this indicates that the worker is an independent contractor.

24) How frequently is the worker paid?

If the worker is paid on the same pay days as employees, this indicates that the worker is an employee.

25) Does the worker receive vacations and/or vacation pay?

If yes, this indicates that the worker is an employee.

26) Is the worker paid for statutory holidays not worked?

If yes, this indicates that the worker is an employee.

27) Is the worker paid overtime?

If yes, this indicates that the worker is an employee.

28) Does the corporation deduct and remit income tax for the worker?

If yes, this indicates that the worker is an employee.

29) Does the corporation make deductions and remittances for employment insurance on a worker's behalf?

If yes, this indicates that the worker is an employee.

30) (a) Does the corporation pay worker's compensation premiums in respect of the worker?

If yes, this indicates that the worker is an employee.

c) Does the worker provide their own liability insurance coverage?

If yes, this indicates that the worker is an independent contractor.

31) Are the worker's expenses reimbursed by the corporation?

If yes, this indicates that the worker is an employee.

32) Does the worker charge and pay GST?

If yes, this indicates that the worker is an independent contractor.

33) Who supervises the worker's work?

If the corporation monitors the worker's work closely, this indicates that the worker is an employee.

34) Can the corporation discipline the worker?

If yes, this indicates that the worker is an employee.

35) If so, has the corporation ever disciplined the worker?

If yes, this indicates that the worker is an employee.

36) Is a Record of Employment issued by the corporation on termination of the relationship?

If yes, this indicates that the worker is an employee.