

# INDEPENDENT CONTRACTOR CHECKLIST

You may use this checklist to determine whether the worker described above is an Employee or Independent Contractor under three IRS categories. To determine the worker's classification, the Employer should mark the appropriate column (but not both) for each indicator listed. The indicators listed are based upon the IRS's regulations and rulings and upon court cases.

Note that this checklist is informational in nature only and as such is not intended or written to be used and it cannot be used for the purpose of avoiding penalties under the Internal Revenue Code.

## **CATEGORY ONE: BEHAVIORAL CONTROL**

<b>Worker May Be an Employee if...</b>	<b>Worker May Be an Independent Contractor if...</b>
Instruction:	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker receives oral or written job procedures, training, and procedures manuals.</li> <li><input type="checkbox"/> Worker receives orders to waste less material, redo unfit work, or stop for Employer's convenience.</li> <li><input type="checkbox"/> Employer enforces penalties when Worker fails to follow instructions.</li> <li><input type="checkbox"/> Worker is unskilled.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Employer gives no training and limits information to the results required: the condition, style, quantity, or quality necessary.</li> <li><input type="checkbox"/> Worker is responsible for materials usage and product quality.</li> <li><input type="checkbox"/> Payer enforces penalties only for unacceptable results.</li> <li><input type="checkbox"/> Worker has previously acquired professional knowledge about how work should be done.</li> </ul>
Training:	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Instructions are extremely detailed.</li> <li><input type="checkbox"/> Employer provides or pays for job training programs.</li> <li><input type="checkbox"/> Training is mandatory or time is compensated.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Instructions contain little detail.</li> <li><input type="checkbox"/> Worker acquires own professional training.</li> <li><input type="checkbox"/> Training is voluntary or not compensated.</li> </ul>
Specifying the Worker:	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Employer requires that work be performed by named individuals.</li> <li><input type="checkbox"/> Worker lacks any right to delegate work to an assistant.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Employer requests specific individuals because of their skills, expertise, and reputation.</li> <li><input type="checkbox"/> Worker retains the right to select and delegate to assistants or subcontractors.</li> </ul>
Available to the Public:	
<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> N/A</li> <li><input type="checkbox"/> Worker does not advertise.</li> <li><input type="checkbox"/> Worker is included on the Employer's business insurance and bonding.</li> <li><input type="checkbox"/> The public, vendors, and customers believe Worker is an employee.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker maintains a separate location from Employer.</li> <li><input type="checkbox"/> Worker advertises in yellow pages, newspapers, websites and social media, mailings, on stationery, radio and TV, uniforms, or vehicles.</li> <li><input type="checkbox"/> Worker provides their own business insurance coverage and bonding.</li> <li><input type="checkbox"/> Others believe Worker is an IC.</li> </ul>

- Cash receipts go directly to Employer. Worker keeps no separate books, records, and bank accounts.
- N/A
- Worker is a former employee performing substantially the same duties.
- Worker operates under the Employer's licenses and governmental permits, has no separate business forms, wears Employer's uniform, drives vehicle with Employer's logo, uses business card with Employer's logo, and has not created a separate legal entity.

- Cash receipts go to Worker, who maintains separate books, records, and bank accounts.
- Employer disclaims responsibility for correcting Worker's problems.
- N/A
- Worker has professional licenses, governmental permits, sales tax certificates, custom business forms with logo, stationery, and incorporation or assumed name certificates

Employing Assistants:

- Employer exercises (directly or through approval) hiring, supervision, and termination authority.
- Worker does not have a separate Federal Employer Identification Number.
- Employer pays Worker's assistants directly and remits payroll taxes.
- Assistants believe Employer is their employer.
- Worker is only a conduit between Employer and assistants and has no chance for profit or loss.

- Only the Worker has hiring, supervision, and termination approval and authority.
- Worker has a separate Federal Employer Identification Number.
- Worker uses own funds to pay assistants and remits payroll taxes.
- Assistants believe Worker is their employer.
- Worker can have profit or loss on wages of assistants.

Hours of Work:

- Employer sets and enforces work hours.

- Worker sets hours.

Full-time Effort:

- Worker is required to devote full-time effort to servicing the Employer.
- Worker has no say in accepting work from the Employer.

- Worker pursues similar work from other, unrelated businesses.
- Worker turns down work from the Employer.

Job Location:

- Employer requires work to be performed at business location where Employer can exercise supervision.

- Worker is free to choose where services are performed.

Sequence of Work:

- Employer requires work to be performed in specific sequence.

- Worker determines sequence of work procedures.

Reporting:

- Employer requires regular time sheets, expense reports, progress reports, and other oral and written reports
- Employer requires attendance at regular project status meetings.

- N/A
- N/A

**CATEGORY TWO: FINANCIAL CONTROL**

<b>Worker May Be an Employee If...</b>	<b>Worker May Be an Independent Contractor If...</b>
<b>Fixed Pay</b>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Payment is based on time: hourly wages, salary, bonuses, drawing accounts, minimum amounts, and advances. Often, fixed amounts are paid at fixed intervals.</li> <li><input type="checkbox"/> Employer regulates lunch times, breaks, and work hours.</li> <li><input type="checkbox"/> Payment is not contingent upon Employer’s review and acceptance of work product.</li> <li><input type="checkbox"/> Worker is paid when employees are paid.</li> <li><input type="checkbox"/> Worker does not invoice Employer for services rendered.</li> <li><input type="checkbox"/> Worker’s contract and other documents are kept with Employer’s personnel files.</li> <li><input type="checkbox"/> Employer withholds payroll taxes and issues Worker Form W-2</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Payment is based on each job where the Worker assumes the risk that pay is not guaranteed, such as commission, bid, or piecework.</li> <li><input type="checkbox"/> Worker sets own lunch times, breaks, and work hours.</li> <li><input type="checkbox"/> Employer reviews and accepts finished product before paying.</li> <li><input type="checkbox"/> Worker is paid separately from employees.</li> <li><input type="checkbox"/> Worker invoices Employer for services.</li> <li><input type="checkbox"/> Worker’s contract, invoices, and other documents are kept in Employer’s vendor files.</li> <li><input type="checkbox"/> Employer issues Worker a Form 1099.</li> </ul>
<b>Reimbursements:</b>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Employer reimburses out-of-pocket expenses.</li> <li><input type="checkbox"/> Employer has review and approval authority for reimbursements</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Cost of out-of-pocket expenses is covered in contracted fee.</li> <li><input type="checkbox"/> Employer cannot review and approve reimbursements.</li> </ul>
<b>Tools and Supplies:</b>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker uses company tools and vehicles.</li> <li><input type="checkbox"/> Employer bears costs of damage to tools and equipment</li> <li><input type="checkbox"/> Employer transports supplies to the job site, bears the cost of damage and waste, and retains unused materials.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker provides tools and vehicles.</li> <li><input type="checkbox"/> Worker bears risk of damage to tools and equipment.</li> <li><input type="checkbox"/> Worker provides supplies, bears the cost of damage and waste, and keeps material.</li> </ul>
<b>Risk of Loss:</b>	
<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker does not directly risk loss of capital.</li> <li><input type="checkbox"/> Worker lacks opportunity for gain by keeping expenses less than revenues.</li> <li><input type="checkbox"/> Worker has no liability for damage to work site.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker risks loss of capital through liability, rejection of the work product, or requirement of additional uncompensated work to meet contract provisions.</li> <li><input type="checkbox"/> Contract terms generally reflect fixed revenue with opportunity for gain through Worker’s control of variable expenses.</li> <li><input type="checkbox"/> Worker must repair any damages caused to the work site.</li> </ul>

Outside Work:

<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker can work only for the Employer or a related entity; only give outside work a lesser priority; or only accept outside work with the Employer’s approval.</li> <li>■ N/A</li> <li><input type="checkbox"/> Worker has few sources of Forms 1099-MISC.</li> <li><input type="checkbox"/> Worker signs a non-compete clause.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker has the ability to solicit work from others, especially competitors.</li> <li><input type="checkbox"/> Worker gives at least equal priority to other firms’ projects.</li> <li><input type="checkbox"/> Worker conducts simultaneous projects with independent businesses.</li> <li><input type="checkbox"/> Worker signs a secrecy clause (Non-Disclosure Statement).</li> </ul>
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**CATEGORY THREE: RELATIONSHIP OF THE PARTIES**

<b>Worker May Be an Employee If...</b>	<b>Worker May Be an Independent Contractor If...</b>
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Integration:

<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker performs tasks that are ordinary and necessary to the business’s success.</li> <li><input type="checkbox"/> Worker is required to perform sundry tasks in unskilled areas.</li> <li><input type="checkbox"/> Employer’s employees join with the Worker in preparing the materials, using the materials, or cleaning up.</li> <li><input type="checkbox"/> Employer’s employees are used to perform same project.</li> <li><input type="checkbox"/> Worker performs tasks and receives treatment similar to employees.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Tasks are type that ICs traditionally perform, such as delivery of a finished product or professional services.</li> <li><input type="checkbox"/> Worker uses unusual, technical, or specialized skills not used in Employer’s general business.</li> <li><input type="checkbox"/> Worker takes care of job from beginning preparation through ending cleanup.</li> <li><input type="checkbox"/> No Employer employees are used.</li> <li><input type="checkbox"/> Worker performs unique tasks and is consistently treated differently than employees.</li> </ul>
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Termination:

<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker may be terminated “at will,” for any or no reason.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker may sue Employer for breach of contract unless the contract’s cancellation clauses are followed.</li> </ul>
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Quitting:

<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker may quit at any time without notice, for any or no reason.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Worker may be liable to Employer for breach of contract unless the contract’s cancellation clauses are followed.</li> </ul>
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Continuing Relationship:

<ul style="list-style-type: none"> <li><input type="checkbox"/> Work is continuous or for an indefinite period.</li> <li><input type="checkbox"/> No written agreement governs the work.</li> <li><input type="checkbox"/> Worker does not compete for the business.</li> <li><input type="checkbox"/> Worker is economically dependent upon Employer.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Work is a discrete project of limited duration.</li> <li><input type="checkbox"/> Worker and Employer sign a new written agreement for each assignment.</li> <li><input type="checkbox"/> Worker solicits the business.</li> <li><input type="checkbox"/> Worker has economic viability beyond reliance on Employer.</li> </ul>
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Employee Benefits:

Worker receives paid vacation or sick days; health, life, or disability insurance; a pension plan; or a tax qualified retirement or benefit plan available only to employees.

Worker does not participate in such plans.

Intent of Parties:

Worker and Employer have no written Independent Contractor agreement.

Worker and Employer have signed Independent Contractor agreement.

Tally the checkmarks for each column...

Total: \_\_\_\_\_

Total: \_\_\_\_\_

Based on the determination from the checklist on the previous pages, the worker may be an...

- Employee
- Independent Contractor

Even if the answers clearly favor one classification over the other, you should still discuss the worker's situation with our office or a tax attorney.

## Contact Information:

### Alpha Omega Accounting, LLC

4212 Olympic Drive

Greeley, CO 80634

970-344-7298 Phone

888-250-3441 Fax

info@alphaomega-acct.biz

On the Web at: [HTTP://WWW.ALPHAOMEGA-ACCT.BIZ](http://www.alphaomega-acct.biz)