GUIDELINE TO ANALYZING EMPLOYER-EMPLOYEE RELATIONSHIP[4]

IRS 20 Factor Test[1]	Restatement (2d) Agency[2]	Darden Factors[3]	Employee	Independent Contractor
1. Instructions	**(a) Extent of Control Exercised Over Details of Work; (c) Whether Work Is Usually Supervised**	**1. Extent of Control Over the Manner & Means That Work Is Accomplished; 6. Right to Assign Additional Duties**	A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee.	Contractors are not required to follow instructions to accomplish a job. Contractors often are specialists or professionals who perform without supervision.
2.Training	**(d) Skills Required**	**2. Skills Required**	Required to be trained by employer on how to do a job in a particular method or manner.	No training required and/or hired party has expertise and skills.
3. Intergration	**(h) Whether the Work is Part of the Regular Business of the Employer**	**10. Whether Work Part of the RegularBusiness of Hiring Party; 11. Whether Hiring Party is in Business**	The hired party's services are fully integrated into the employer's business and depends to an appreciable degree upon those services for success or continuation of its business.	Services are not integrated into employer's business. Contractors generally do not perform work that determines the success or continuation of the hiring firm.
4. Personal	**(cmt h) Work Delegation**		Required to perform services personnally.	Not required to perform services personnally.
5. Assistants		**9. Role In Hiring Or Paying Assistants**	Assistants are hired, supervised and paid by employer.	Generally, hiring party hires its own assistants, required only to attain or provide a particular result or contract receivable.
6. Continuity	**(f) Length of Time Employed**	**5. Duration of Relationship Between Parties**	A continuing economic relationship which may include work at recurring but irregular intervals.	No assumption of continuing relationship.
7. Hours of Work	**(cmt h) Regular Hours**	**7. Discretion over when and how to work**	Employer establishes set hours of work.	Free to establish own hours of work.
8. Time Required	**(cmt h) Full time Employment**		Worker must devote substantially full time to the business of the employer.	Contractors are generally not restricted from seeking and performing other gainful work.

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9. Work Location	**(e) Location of Work**	**4. Location of Work**	Work is performed on the employer's premises.	Contractors control where they work. When contractors perform work on hiring firm's premises, it is without direction or supervision.
10. Sequence of Work			Must perform services in order or sequence set by the employer.	Free to accomplish work in any sequence.
11. Reports			Regular or written reports to the person or persons for whom the services are performed are required.	Contractors are hired to produce a final result, and therefore should not be required to submit interim or regular reports.
12. Payment	**(g) Method of Payment**	**8. Method of Payment**	Generally paid by by time, i.e. hour, week, month.	Generally paid by result, for example completion of work or project.
13. Expenses		**13. Provision of Employment Benefits**	Is generally reimbursed for business-related expenses, implying a right of regulation and direction from employer. Employer may also provide employment benefits and/or pay taxes.	Generally, covers own expenses and expenses may be included in total payment. Generally, employment benefits not provided.
14. Tools & Materials	**(e) Source of Tools**	**3. Source of tools**	Tools and materials needed to perform job are provided by the employer.	Uses own tools and materials to accomplish work.
15. Facility Investment	**(e) Source of Instrumentalities**	**3. Source of Instrumentalities**	Has no investment in facilities required to accomplish work and is dependent upon employer's facilities.	Has an investment in facilities, such as an office rented from a third party.
16. Profit or Loss		**13. Tax treatment of the hired party**	Cannot realize a profit or loss from his services.	Has an exposure to economic gain or loss on accomplishment of work.
17. Working For More Than One At A Time	**(cmt h) Employment By Others**		Performs work under a single financial arrangment.	Performs work simultaneously for multiple, unrelated persons or entities.

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18. General Public	**(b) Whether Engaged in a Distinct Occupation or Business; (cmt h) Whether Community Regards As Employee or Contractor**		Does not make services available to general public.	Makes services available to the general public on regular basis.
19. Right to Discharge	**(i) Parties Beliefs Regarding the Relationship**		Employer can fire and control nature and pace of work through threat of firing. While not determinative, the parties intentions and beliefs indicate the assumption of control by one over the other.	Cannot be discharged so long as results are satisfactory.
20. Right toTerminate	**(i) Parties Beliefs Regarding the Relationship**		Worker can quit at any time without liability to employer. While not determinative, the parties intentions and beliefs indicate the the submission of control to one over the other.	Contractors are responsible for the satisfactory completion of their contractual obligation, and may be subject to a penalty or legal action if they fail to complete the agreed upon work.

1. The 20 Factor IRS Test is utilized by the Internal Revenue Service (IRS) in classifying workers as employees or independent contractors.
2. Whether an individual is an independent contractor or an "employee" is generally determined by applying agency principles to the particular factual circumstances. The Restatement (2d) of Agency set forth these principles and are frequently used by Courts in determining whether an employment relationship exists.
3. The Darden Test was articulated by the United States Supreme Court in Nationwide Mut. Ins. Co. v. Darden 503 U.S. (318 (1992). The Darden Test applies to various statutes containing the term "employee" and do not otherwise define the term (e.g. ERISA, Title VII, etc.).
4. In weighing any of these factors, all of the incidents of the relationship must be assessed and weighed together, with no single factor being decisive. In short, the determination must be made by analyzing each case individually. There is no absolute "bright- line" test available to determine whether a person performing work is an "independent contractor" or an "employee." Administrative agencies and the courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee. In addition, there is not a single homogenous definition of the term "employee" applicable to all federal and state statutes and legal causes of action. Accordingly, workers may be "employees" within the meaning of some statutes, while simultaneously retaining their status as independent contractors within the meaning of other statutes.