Tools of the Trade April 13, 2015: Are you an independent contractor or an employee?

Nancy Miller-Levin nancy.millerlevin@gmail.com

HOW MUCH CONTROL DOES THE THEATER RETAIN OVER THE MEANS AND MANNER OF YOUR WORK PERFORMANCE? CONTROL OVER YOUR WORK IS A SIGN YOU ARE AN EMPLOYEE.
INDICATIONS OF CONTROL INCLUDE:

- Theater requires you to comply with detailed instructions about when, where and how you are to do your job.
  - Does the theater direct the order or sequence of your work? Even if you are skilled so that the theater does not direct your work, do they have the right to do so?

- Theater exercises authority over any workers who assist you.
  - Does theater hire and pay assistants? Does theater supervise the details of your assistants' work?

- Theater requires you to report orally or in writing on the method or process you are using to do your job.
  - Things that don't count: periodic reports if the reports are used to establish payment due or to determine compliance with the terms of a contract.

- Work that could be done elsewhere is required by the theater to be done on their premises.
  - Work that can be done off premises suggests lack of theater control.

- The theater requires you to personally perform the work.
  - Can you hire someone to perform all or part of the work? If not, is there a good reason, e.g., you are well known to be the best in town at a certain type of work?

- You have a continuing service relationship with the theater.
  - Is the work you perform for a theater part of a continuing relationship? A continuing service relationship does not have to be unbroken, and may include work performed when work is available, as long as it is frequently recurring.

- The theater sets the hours you work.
  - Does the employer require you to work at certain times?

- The theater trains you on aspects of your work.
  - Does an employee of the theater train you? Does the theater require you to attend meetings or undergo other trainings?

- You devote what would be full time hours in your field to the theater.
  - Do you have to produce so much work that it compels you to devote all of your work time to one theater? Or can you take other jobs?

- You do not work for a number of theaters at the same time.
  - Can you work for more than one theater at the same time?

- The theater furnishes your tools, materials and supplies.
  - Do workers in your field customarily furnish their own tools? This is common with some employees.

- The theater reimburses you for business or traveling expenses.
  - Are you paid on a job basis, responsible for all of your expenses? Or does the theater reimburse you for business or travel expenses?
### ADDITIONAL FACTORS THAT INDICATE A WORKER IS AN EMPLOYEE, NOT AN INDEPENDENT CONTRACTOR.

<table>
<thead>
<tr>
<th>Factor</th>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>The theater has the right to discharge you with little notice, without cause, or for failure to follow certain methods or rules.</td>
<td>Non-union employees usually can be terminated. Independent contractors cannot be terminated if they produce an end result that complies with contract specifications. Some independent contractor agreements allow termination for default or nonperformance, which does not transform the worker into an employee.</td>
</tr>
<tr>
<td>You do not make your services available to the general public on a continuing basis.</td>
<td>Do you make yourself available to many theaters? Do you have an office? Assistants? A business license? A business listing somewhere? Do you advertise your services? Is there a sign in front of your workspace?</td>
</tr>
<tr>
<td>You are paid by the hour, week, or month, rather than on a per job basis.</td>
<td>An independent contractor’s payment for the job can be based on an estimate of the amount of hours needed to complete the job.</td>
</tr>
<tr>
<td>You do not have the ability to realize a profit or loss in your business.</td>
<td>Are your profits/losses dependent on your receipts and expenditures? Can you impact your profit by hiring, directing and paying your own assistants? Do you provide your own equipment, materials or facilities? Do you have continuing and recurring financial liabilities or obligations relating to the work? Do you pay your own expenses in connection with the work? Do you perform specific jobs for work agreed upon in advance? Does the quality of your work affect your business reputation, and not the reputation of the theaters for whom you work? Yes indicates you are an independent contractor in business for yourself.</td>
</tr>
<tr>
<td>You have the right to resign from the job without becoming liable.</td>
<td>Would you be liable to the theater if you failed to complete the work? An independent contractor usually agrees to complete a specific job and is liable for failing to complete it.</td>
</tr>
<tr>
<td>You have made a substantial financial investment in items needed to perform your services.</td>
<td>Have you spent money on something of considerable worth in order to perform your job? This can include equipment or premises, but not tools or similar items if it is common for workers in your industry to have their own tools.</td>
</tr>
<tr>
<td>The theater sets the hours you work.</td>
<td>Does the employer require you to work at certain times?</td>
</tr>
<tr>
<td>The theater trains you on aspects of your work.</td>
<td>Does an employee of the theater train you? Does the theater require you to attend meetings or undergo other trainings?</td>
</tr>
<tr>
<td>You devote what would be full time hours in your business to the theater.</td>
<td>Do you have to produce so much work that it compels you to devote all of your work time to one theater? Or can you take other jobs?</td>
</tr>
<tr>
<td>You do not work for a number of theaters at the same time.</td>
<td>Can you work for more than one theater at the same time?</td>
</tr>
<tr>
<td>The theater is responsible for your negligence, personal behavior and work actions during the times you perform services.</td>
<td>If you make a mistake and someone is hurt, would the theater be responsible?</td>
</tr>
<tr>
<td>The services you provide are necessary to the fundamental business purpose of the theater.</td>
<td>What is the fundamental purpose of the theater? Is the type of work you do needed for that fundamental purpose?</td>
</tr>
<tr>
<td>The theater furnishes your tools, materials and supplies.</td>
<td>If workers in your field customarily furnish their own tools, this would not show lack of control by the theater.</td>
</tr>
<tr>
<td>The theater reimburses you for business or traveling expenses.</td>
<td>Are you paid on a job basis, responsible for all of your expenses? Or does the theater reimburse you for business or travel expenses?</td>
</tr>
</tbody>
</table>
Kenneth Hunter v. Crawford Door Sales

Supreme Court of Minnesota. June 18, 1993.

PAGE, Justice.

"Crawford Door Sales is in the business of selling and installing garage doors and the door openers. Crawford Door had a number of regular employees who were provided uniforms, company trucks, and tools. When there was an overload of work, Crawford Door hired "subcontractors," individuals whom they would train and dispatch on a per-job basis as needed. Subcontractors were to provide their own transportation and tools, and they were not provided company uniforms. They worked without supervision and were paid on a per-job basis without deductions for taxes and social security. Crawford Door hired Kenneth Hunter as a "subcontractor." At the time he was hired, Hunter was advised subcontractors were not allowed to solicit or procure garage door jobs or do any garage door work not provided by Crawford Door.

The record reflects that Crawford Door expected Hunter to report to the loading dock at 8:15 a.m. every morning to obtain his work orders and whatever equipment he needed for the day. The timing was important as the loading of trucks had to be coordinated. If a job entailed special hardware or equipment other than Hunter's own basic hand tools, that would be supplied by Crawford Door. Although Hunter generally worked alone, when a job required more than one person, Crawford Door would send one of the "service guys" to help.

On September 17, 1991, Hunter sustained a severe crush injury to his right hand while installing a garage door opener. He was taken to United Hospital in St. Paul where he had surgery the same day. In January 1992, he was given medical authorization to work with restrictions.

Hunter sought various workers' compensation benefits as an employee of Crawford Door. The compensation judge, however, determined Hunter had worked as an independent contractor; and the WCCA affirmed on appeal.

In 1983, the legislature authorized the Commissioner of the Department of Labor and Industry to establish criteria to be used to determine "independent contractor" status. Act of June 7, 1983, ch. 290, § 165(j), 1983 Minn.Laws 1310, 1397. In response, the commissioner adopted Minn. Rules 5224.0010 to 5224.0340. Prior to adoption of these rules, factors generally considered included: the right to control the means and manner of performance, the mode of payment, the furnishing of materials or tools, the control of the premises where the work is to be done, and the right of the employer to discharge. See Olsen v. Kling, 363 N.W.2d 310, 312-13 (Minn.1985). As the WCCA has previously recognized, the administrative rules are basically derivative of the traditional five-factor analysis set out by prior case law. Keefe v. Stans Aluminum, 42 Minn.Workers' Comp.Dec. 700 (WCCA 1989), aff'd without opinion, 451 N.W.2d 330 (Minn.1990). Compare Minn.Rules 5224.0330 and 5224.0340 with Olsen, supra. In a nub, the rules and prior case law emphasize that it is the right to control the means and manner of performance that is the most significant factor in determining the existence of an employment relationship. Minnesota Rules 5224.0330; Hammes v. Suk, 291 Minn. 233, 235-6, 190 N.W.2d 478, 481 (1971).

Certainly, in this case there was evidentiary support [to find Hunter was in independent contractor]. Hunter provided his own hand tools, worked alone, and was paid by the job without deductions for taxes, etc. But the determination of employment status is, ultimately, a legal one. Furthermore, the fundamental test of employment is the right, not just the exercise, of the employer to control the details of the work. This distinction becomes important when skilled workers appear to go about their job without supervision. See, e.g., Palmquist v. Meister, 277 N.W.2d 376 (Minn.1979) (carpenter held to be employee). Here, * * * there was evidence supporting Hunter's claim that Crawford Door not only had the right to, but did in fact, exercise a substantial amount of control over the manner in which Hunter did his job. Indeed, the contract of hire was contingent upon successful completion of on-the-job training. It may be undue weight was given to the parties' oral characterization of the relationship at the time of hire; but as a general rule, the "nature of the relationship is to be ascertained, not from the label given to it by the parties themselves, but from the consequences which the law attached to their arrangements and to their conduct." Edelston v. Builders and Remodelers, Inc., 304 Minn. 550, 551, 229 N.W.2d 24, 25 *625 (1975); see 1B Larson, The Law of Workmen's Compensation, § 46.30 (1992). Consequently, we are of the opinion that, when measured against standards set out by rule and prior case law, the facts as found by the compensation judge demonstrate an employment relationship. We therefore reverse the determination that Hunter was an independent contractor **."
To look up employer workers compensation insurance coverage and/or report employers without coverage, go to the Minnesota Department of Labor & Industry website http://www.dli.mn.gov/WC/AboutCov.asp

Under the workers compensation statute, "employee" means any person who performs services for another for hire including specific voluntary uncompensated workers.

- Volunteers in state institutions under the commissioners of human services and corrections engaged in emergency management.
- Volunteers in a program established by a county social services agency.
- Volunteers under the commissioner of natural resources.
- Volunteers performing services for joint labor-management nonprofit community service projects in the building and construction industry.
- Members of the military forces, in state active service.
- Minnesota Historical Society volunteers.
- Minnesota State Academy for the Deaf or the Minnesota State Academy for the Blind volunteers.
- Minnesota veterans home volunteers.
- Personal care attendants.
- Students enrolled in and regularly attending the Medical School of the University of Minnesota.
- Certain faculty members of the University of Minnesota.
- Certain volunteer ambulance driver or attendants.
- Volunteers at the Department of Administration.
- Pollution Control Agency volunteers
- First responders or members of law enforcement assistance organizations.
- Volunteers in civil air patrol.
- Minnesota Responds Medical Reserve Corps volunteers.
**Form SS-8**

**Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding**

Name of firm (or person) for whom the worker performed services | Worker's name
--- | ---
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code) | Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)
Trade name | Firm's email address | Worker's daytime telephone number | Worker's email address
Firm's fax number | Firm's website | Worker's alternate telephone number | Worker's fax number
Firm's telephone number (include area code) | Firm's employer identification number | Worker's social security number | Worker's employer identification number (if any)

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer.

---

**Disclosure of Information**

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See Privacy Act and Paperwork Reduction Act Notice in the separate instructions for more information. If you do not want this information disclosed to other parties, do not file Form SS-8.

Parts I-V. All filers of Form SS-8 must complete all questions in Parts I-V. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter “Unknown” or “Does not apply.” If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm’s name (or worker’s name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

**Part I  General Information**

1. This form is being completed by: [ ] Firm [ ] Worker; for services performed to .
   (beginning date) (ending date)
2. Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers’ compensation benefits, or you were audited or are being audited by the IRS).
   
3. Total number of workers who performed or are performing the same or similar services: .
4. How did the worker obtain the job? [ ] Application [ ] Bid [ ] Employment Agency [ ] Other (specify)
5. Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker’s status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue $ .
   If both Form W-2 and Form 1099-MISC were issued or received, explain why: .
6. Describe the firm’s business: .
Part I  General Information (continued)

7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: 

Previous owner's taxpayer identification number: Change was: □ Sale □ Merger □ Acquisition □ Reorganization

□ Other (specify) 

Description of above change: 

Date of change (MM/DD/YY): 

8 Describe the work done by the worker and provide the worker's job title. 

9 Explain why you believe the worker is an employee or an independent contractor. 

10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request? □ Yes □ No □ N/A 

If "Yes," what were the dates of the prior service? 

If "Yes," explain the differences, if any, between the current and prior service. 

11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. 

Part II  Behavioral Control (Provide names and titles of specific individuals, if applicable.)

1 What specific training and/or instruction is the worker given by the firm? 

2 How does the worker receive work assignments? 

3 Who determines the methods by which the assignments are performed? 

4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? 

5 What types of reports are required from the worker? Attach examples. 

6 Describe the worker's daily routine such as his or her schedule or hours. 

7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. 

8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). 

9 Is the worker required to provide the services personally? □ Yes □ No 

10 If substitutes or helpers are needed, who hires them? 

11 If the worker hires the substitutes or helpers, is approval required? □ Yes □ No 

If "Yes," by whom? 

12 Who pays the substitutes or helpers? 

13 Is the worker reimbursed if the worker pays the substitutes or helpers? □ Yes □ No 

If "Yes," by whom?
### Part III  Financial Control (Provide names and titles of specific individuals, if applicable.)

1. List the supplies, equipment, materials, and property provided by each party:
   - The firm: 
   - The worker: 
   - Other party: 

2. Does the worker lease equipment, space, or a facility?  
   - Yes  
   - No  
   If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.)

3. What expenses are incurred by the worker in the performance of services for the firm?

4. Specify which, if any, expenses are reimbursed by:
   - The firm: 
   - Other party: 

5. Type of pay the worker receives:  
   - Salary  
   - Commission  
   - Hourly Wage  
   - Piece Work  
   - Lump Sum  
   - Other (specify) 
   If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. $  

6. Is the worker allowed a drawing account for advances?  
   - Yes  
   - No  
   If "Yes," how often? 
   Specify any restrictions.

7. Whom does the customer pay?  
   - Firm  
   - Worker  
   If worker, does the worker pay the total amount to the firm?  
   - Yes  
   - No  
   If "No," explain.

### Part IV  Relationship of the Worker and Firm

1. Please check the benefits available to the worker:  
   - Paid vacations  
   - Sick pay  
   - Paid holidays  
   - Personal days  
   - Pensions  
   - Insurance benefits  
   - Bonuses  
   - Other (specify) 

2. Can the relationship be terminated by either party without incurring liability or penalty?  
   - Yes  
   - No  
   If "No," explain your answer.

3. Did the worker perform similar services for others during the time period entered in Part I, line 17?  
   - Yes  
   - No  
   If "Yes," is the worker required to get approval from the firm?  
   - Yes  
   - No  

4. Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation.

5. Is the worker a member of a union?  
   - Yes  
   - No

6. What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable.

7. If the worker assembles or processes a product at home, who provides the materials and instructions or pattern?

8. What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)?

9. How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services?

10. If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)?
**Part V**  For Service Providers or Salespersons. Complete this part if the worker provided a service directly to customers or is a salesperson.

1. What are the worker's responsibilities in soliciting new customers?

2. Who provides the worker with leads to prospective customers?

3. Describe any reporting requirements pertaining to the leads.

4. What terms and conditions of sale, if any, are required by the firm?

5. Are orders submitted to and subject to approval by the firm?  
   □ Yes  □ No

6. Who determines the worker's territory?  

7. Did the worker pay for the privilege of serving customers on the route or in the territory?  
   □ Yes  □ No
   If "Yes," whom did the worker pay?  
   ____________________________
   If "Yes," how much did the worker pay?  
   ____________________________  $  

8. Where does the worker sell the product (for example, in a home, retail establishment)?

9. List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. 

10. Does the worker sell life insurance full time?  
    □ Yes  □ No

11. Does the worker sell other types of insurance for the firm?  
    □ Yes  □ No
    If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance  
    ____________________________ %

12. If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation  
    ____________________________ %

13. Is the merchandise purchased by the customers for resale or use in their business operations?  
    □ Yes  □ No
    Describe the merchandise and state whether it is equipment installed on the customers' premises. 

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

____________________________  ____________________________  ____________________________
Type or print name below signature.  Title  Date

Form SS-8 (Rev. 5-2014)
This fact sheet explains Minnesota income tax withholding responsibilities as they relate to classification of independent contractors. If you need more information, see "Information and Assistance" on page 2.

When workers perform services for a business, they may be classified as independent contractors or employees. It is critical that they be classified correctly. If the worker is an employee, generally the employer must withhold and deposit income taxes, Social Security taxes and Medicare taxes. In addition to these taxes, the employer must pay unemployment taxes and carry worker’s compensation insurance. This is generally not required for independent contractors.

**How to Classify a Worker**

To determine if an individual is an employee or an independent contractor, the business relationship between you and the individual performing the services must be examined. All evidence of control and independence must be considered.

Many factors are considered when deciding if a worker is an employee or an independent contractor. These factors fall into three main categories:

- behavioral control
- financial control
- relationship of the parties

If you are generally in control of (or have the right to control) these factors, the worker is most likely your employee. Not all of the following factors need to be present to make a determination of worker status; however, all factors must be considered.

**Behavioral Control**

If you have the right to direct or control the manner and means in which services are performed, you have behavioral control over the worker. You do not have to actually direct or control the way work is done, as long as you have the right to do so.

The following behavioral control factors indicate the worker is an employee:

- you direct how, when or where the work will be done;
- you specify which tools or equipment will be used;
- you specify the sequence in which services will be performed;
- you determine who will be hired to assist with the work;
- you decide where supplies and services will be purchased;
- you establish work hours;
- you require reports to be submitted; or
- you provide training regarding procedures and methods.

**Financial Control**

If you have the right to direct or control the administrative aspects of the work, you have financial control over the worker. The following financial aspects indicate the worker is an employee:

- you reimburse or pay travel and business expenses;
- you pay at regular intervals (hourly, weekly, etc.); or
- you provide tools, materials, and other equipment.

The following financial aspects indicate the worker is an independent contractor:

- the worker has an opportunity for profit or risk of loss;
- the worker has a significant investment in the work;
- the worker offers services to the general public; or
- the services provided are not an integral part of the business (e.g., a bank hiring a plumber).

**Relationship of the Parties**

The following factors illustrate how you and your worker perceive your relationship and indicate your worker is an employee:

- the worker has the right to quit without incurring liability;
- you have the right to fire the worker;
- the worker has the right to receive employee benefits;
- there is a continuing relationship between you and the worker; or
- services performed by the worker are a key aspect of the regular business activities.

Written contracts are taken into consideration when determining worker classifications. However, the mere existence of a contract does not make a worker an employee or an independent contractor. The actual relationship between the parties must be examined.

**Examples**

- Maria, a computer science student, gets a part-time job as a customer service representative at a computer-software company. Maria works designated hours at the business location, is paid hourly, has no investment and is trained on how to help customers. Maria is an employee.

This fact sheet is intended to help you become more familiar with Minnesota tax laws and your rights and responsibilities under the laws. Nothing in this fact sheet supersedes, alters or otherwise changes any provisions of the tax law, administrative rules, court decisions or revenue notices. Alternative formats available upon request.
- Jack's Construction is building a house that must be completed in six months. Jack's Construction is not licensed to do the electrical work. Carrie's Electric is subcontracted to do the work. Carrie bids the job and will be paid upon completion. The work is done without the supervision of Jack's Construction. Carrie advertises her business in the telephone book and newspaper. She uses her own tools and equipment and works with many construction companies. Carrie is an independent contractor.

- Kristine is the President of ABC Company, an S corporation. She works approximately 20 hours a week and pays herself $2,000 per month. Kristine is an employee of ABC Company. (For more information on corporate officers, see Withholding Fact Sheet 6, Corporate Officers).

- Joseph drives a truck for Amber's Leasing, a company that leases tractor-trailer rigs with drivers to contract carriers. Amber's Leasing retains the right to direct and control Joseph to the extent necessary to protect its investment. Joseph is an employee.

- Rachel drives cars to a distant auction for Nick's Used Car Sales. Nick determines the minimum selling price. Nick reimburses all of her expenses. She is paid on a commission basis. Rachel is an employee of Nick's Used Car Sales.

**Employees**

If the worker is an employee, you must register, file and deposit all required federal and state taxes. For more information, see Withholding Fact Sheet 10, New Employer Guide.

**Independent Contractors**

If the worker is an independent contractor, you must have him or her complete federal Form W-9, Request for Taxpayer Identification Number and Certification, to obtain a taxpayer ID number (TIN).

If the independent contractor fails to provide you with a TIN, you must withhold 9.85 percent Minnesota income tax from the independent contractor's pay. This is called backup withholding.

For more information on Minnesota backup withholding, see the Minnesota Income Tax Withholding Instruction booklet. For more information on federal backup withholding, see Publication 15, Circular E and Publication 1281, Backup Withholding for Missing and Incorrect Names/TINs.

You may be required to file federal Form 1099-MISC, Miscellaneous Income, to report payments made to independent contractors. To obtain federal forms, instructions and publications, contact the IRS (see "Information and Assistance" on this page).

**Request a Determination**

An employer or employee wanting a worker classification determination may complete and submit federal Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, to the IRS. The IRS will review the request and determine whether the worker should be classified as an employee or an independent contractor.

The department will abide by the determination made by the IRS. Send a copy of Form SS-8 (marked "Minnesota copy") to the department at the same time as it is submitted to the IRS. Mail a copy of the determination to us as soon as it is received from the IRS. Mail to:

Minnesota Department of Revenue
Income Tax and Withholding Division
Mail Station 6501
St. Paul, MN 55146-6501

**Classifying Workers Incorrectly**

The IRS, Minnesota Department of Revenue, Minnesota Department of Employment and Economic Development, and the Minnesota Department of Labor and Industry have the authority to make worker classification determinations. If it is discovered that employees are being incorrectly treated as independent contractors, an employer could be liable for all back taxes plus any applicable penalties and interest. It can be very costly for businesses to classify workers incorrectly.

An employer who misclassifies an employee as an independent contractor is subject to a tax equal to 3 percent (.03) of the wages paid to the employee. The employee may not claim the tax as a credit (withholding) on their Minnesota individual income tax return.

**Information and Assistance**

Additional forms and information, including fact sheets and frequently asked questions, are available on our website.

Website: www.revenue.state.mn.us
Email: withholding.tax@state.mn.us
Phone: 651-282-9999 or 1-800-657-3594

We will provide information in other formats upon request to persons with disabilities.

**Other Agencies to Help You Correctly Classify Workers**

- IRS ............................ www.irs.gov or 1-800-829-4933
- Minnesota Department of Employment and Economic Development
  www.mn.gov ................................. 651-296-6141
  ui.mn@state.mn.us
- Minnesota Department of Labor and Industry
  www.dli.mn.gov ................................. 651-284-5005
  1-800-342-5354

Minnesota Revenue, Independent Contractor or Employee?
INFORMATION FOR DETERMINING IF A WORKER IS, OR WAS AN EMPLOYEE

Return completed form (within 10 days) to:
MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
1st National Bank Building, 332 Minnesota Street – Suite E200, Saint Paul MN 55101-1351 USA

The information provided on this form is one of the factors used by the Department to determine whether services were performed as employment or as an independent contractor.

**Business Firm:**
Complete the questionnaire to reflect the nature of the services of those workers whose status is in question. Complete a separate questionnaire for each class of workers who perform similar services. For each worker provide the following information:
(Attach a separate sheet, if necessary.)

<table>
<thead>
<tr>
<th>Business Firm Name:</th>
<th>Class of Worker:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Worker</td>
<td>Social Security Number</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Worker:**
Complete the questionnaire to reflect the nature of the services you provided for the business firm and provide the following information:

<table>
<thead>
<tr>
<th>Business Firm Name:</th>
<th>Type of Services:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Worker</td>
<td>Social Security Number</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Is there a written signed Contract between the firm and the worker?
(If "YES", attach a signed copy and explain any differences between the contract and the actual work relationship)

2. Does the worker have assistants?
(If "YES" complete items A through E, below)

A. Did the firm know that assistants would be needed?
B. Did the firm hire or approve of the assistants?
C. Does the firm pay the assistants?
D. Does the firm supervise the assistants' work?
E. Can the firm discharge the assistant or require the worker to discharge the assistant?

3a. Does the firm have the right to determine:
(1) When the work is to be done?
(2) Where the work is to be done?
(3) Methods for completing the work?
(4) Minimum volume of production?
(5) Policies to be followed?
(6) The worker to attend regular meetings?
(7) Are there written manuals or procedures?

4. Does the worker make regular oral or written reports to the firm?
(If "YES", indicate how often, for what purpose, and in what manner. If possible, attach copies of reports.)

5. Does the worker perform the services:

A. On the firm's premises?
B. At the worker's place of business?
C. At the worker's home?
D. At customer job sites?
E. Other? (Explain)

6. Can the worker hire a substitute without the firm's knowledge or consent?

7a. Has the worker been discharged without the firm's consent?
7b. Has the work relationship been on a frequently recurring basis?

8. Does the firm have the right to discharge the worker:

A. For failure to follow instructions?
B. For poor performance?
C. At any time?
D. With little or no notice?
E. Without cause?
F. Without incurring liability for damages?

FOR EACH "YES" ANSWER, ATTACH A SHEET WHICH LISTS SPECIFIC EXAMPLES. ATTACH COPIES OF DOCUMENTS REQUESTED. INDICATE THE CORRESPONDING QUESTION NUMBER THAT YOU ARE COMMENTING ON.

Continued on Page 2
<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
<th>17a. Is the worker paid on a regular schedule or in sporadic intervals?</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>9. Does the firm require the worker to work at certain times?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Does the firm provide the following training:</td>
<td></td>
<td></td>
<td>(1) Is it at an hourly rate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Experienced person trains worker?</td>
<td></td>
<td></td>
<td>(2) Is it at a weekly rate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Required attendance at meetings that include training?</td>
<td></td>
<td></td>
<td>(3) Is it at a monthly rate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Written training guides or manuals?</td>
<td></td>
<td></td>
<td>17b. Is the worker paid:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Does the worker devote full time to the firm?</td>
<td></td>
<td></td>
<td>(1) On a commission basis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indicate the average number of hours worked in each week</td>
<td></td>
<td></td>
<td>(2) On a drawing account?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Can the worker realize a profit or suffer a loss as a result of his or her services?</td>
<td></td>
<td></td>
<td>(3) If a draw, is it a loan repayment? (If &quot;YES&quot;, please explain)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Can the worker end the work relationship at any time without incurring liability for failure to complete the job?</td>
<td></td>
<td></td>
<td>(4) On a bid basis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Does the firm furnish the worker:</td>
<td></td>
<td></td>
<td>(5) On a piece rate basis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. Company car or truck?</td>
<td></td>
<td></td>
<td>(6) On a per-job basis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Tools and/or equipment?</td>
<td></td>
<td></td>
<td>(7) Other? (If &quot;YES&quot;, please explain)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Materials?</td>
<td></td>
<td></td>
<td>18. Does the worker have substantial investment in the standard facilities used to perform services for the firm excluding hand tools, instruments, or clothing furnished by employees as common practice in the trade? (If &quot;YES&quot;, list the items and their approximate value)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Supplies and/or clothing?</td>
<td></td>
<td></td>
<td>19. Does the worker work for a number of firms at the same time as an independent contractor?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(If &quot;YES&quot;, list what is furnished)</td>
<td></td>
<td></td>
<td>20. If the worker's service was unsatisfactory:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Does the firm pay or reimburse expenses of the worker?</td>
<td></td>
<td></td>
<td>(Check all of the following that apply):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(If &quot;YES&quot;, specify what expenses and how they are reimbursed)</td>
<td></td>
<td></td>
<td>A. The firm would correct the problem at its own expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Does the worker make services available to the public in the worker's name through:</td>
<td></td>
<td></td>
<td>B. The firm would require the worker to correct the problem at the firm's expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A. An office maintained by the worker?</td>
<td></td>
<td></td>
<td>C. The firm would require the worker to correct the problem at the worker's expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. A sign on the worker's home, car, or office?</td>
<td></td>
<td></td>
<td>D. The firm could hold the worker legally liable for the expense of correcting the problem</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. A business license?</td>
<td></td>
<td></td>
<td>E. The firm's customer would deal directly with the worker to correct the problem</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Professional license? (Explain)</td>
<td></td>
<td></td>
<td>21. Are the services performed in the normal course of the firm's business activities?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. A listing in a business or telephone directory?</td>
<td></td>
<td></td>
<td>22. Does the firm provide this worker with:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>F. Advertising in a newspaper, trade journal or magazine?</td>
<td></td>
<td></td>
<td>A. Worker's compensation insurance?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>FOR EACH &quot;YES&quot;, ANSWER, ATTACH A SHEET WHICH LISTS SPECIFIC EXAMPLES, ATTACH COPIES OF DOCUMENTS REQUESTED. INDICATE THE CORRESPONDING QUESTION NUMBER THAT YOU ARE COMMENTING ON.</td>
<td></td>
<td></td>
<td>B. Life, health, and/or medical insurance?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C. Vacation and/or holiday pay?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I certify that information on this questionnaire is true and correct to the best of my knowledge.

Signature: ___________________________  Title: ___________________________  Date: ___________________________