



Independent Contractors:

Avoiding Costly Misclassification

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August 19, 2021

Not tax or legal advice | Powered by **Mineral**



Welcome to the Webinar!

A woman with dark hair tied back, wearing a white lace top, is seated at a wooden table, focused on a laptop. A man with dark curly hair, wearing a bright yellow long-sleeved shirt, stands behind her, leaning over the table and looking at the laptop screen. The table is cluttered with various items including a pair of scissors, a blue stapler, and some papers. In the background, there is a brick wall and a mannequin, suggesting a creative or design studio environment.

- We will email you the recording and slides within 24 hours.
- Please participate in our polls.
- Please use the Q&A box for questions.

Agenda



- Benefits and Drawbacks
- DOL Test
- IRS Test
- ABC Test
- Tips and Traps

Benefits



- No overtime or payroll hassles
- No social security and Medicare taxes
- No worker's comp or unemployment insurance
- No benefits
- Keeps employee count down
- Reduces management burdens
- Saves office space


Drawbacks

- Can't manage the work as closely
- Can't impose as many expectations on worker
- If done incorrectly, it will be very expensive



Employee or Independent Contractor (IC)?



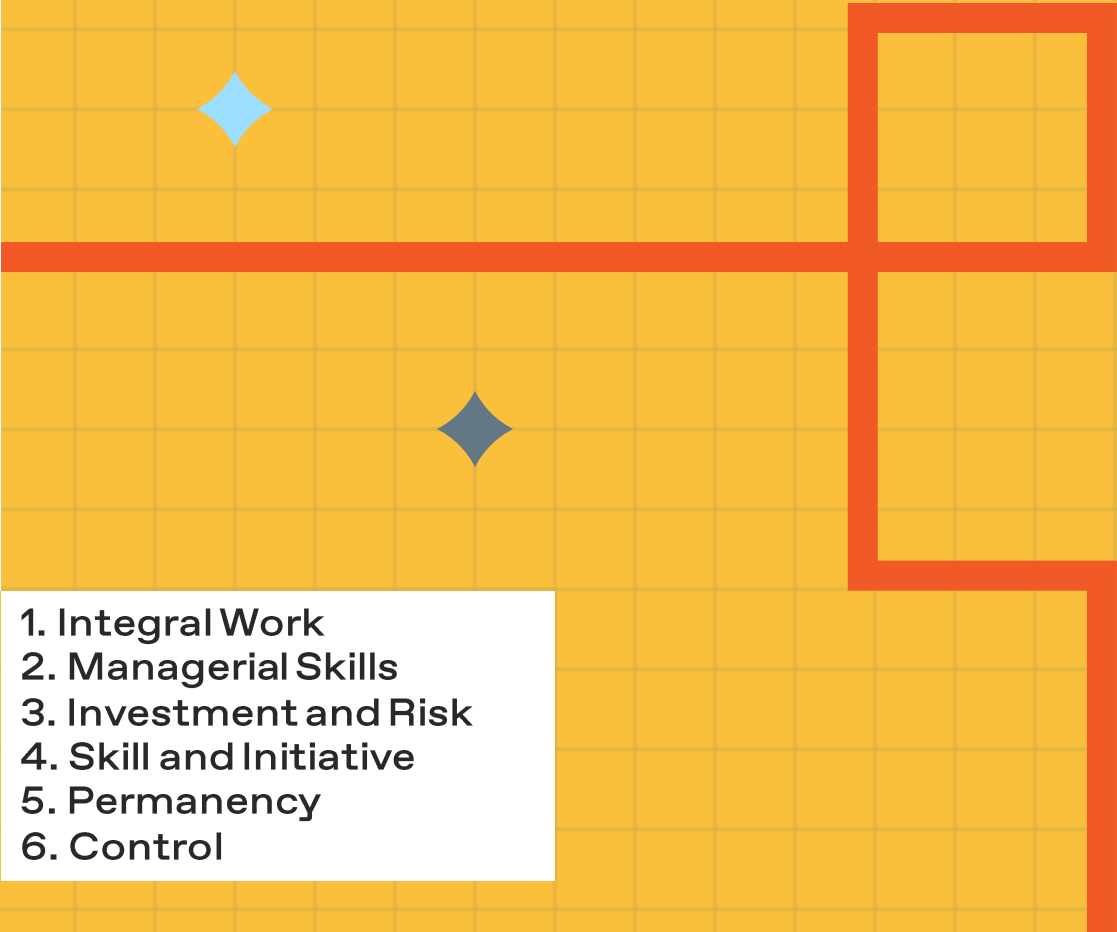
A close-up photograph of a person's hands typing on a laptop. The person is wearing a yellow, textured sweater. The laptop is silver and sits on a dark wooden surface. The background is slightly blurred, showing more of the person's torso and the desk.

Two Federal Tests for Worker Status

DOL Test: What are the economic realities?

IRS Test: Who has control over the work?

DOL's Economic Realities Test

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- A decorative graphic consisting of a thick orange line that starts horizontally, then turns 90 degrees downward, and finally turns 90 degrees to the right. There are two diamond shapes: a light blue one above the horizontal segment and a dark blue one below it.
- 1. Integral Work
 - 2. Managerial Skills
 - 3. Investment and Risk
 - 4. Skill and Initiative
 - 5. Permanency
 - 6. Control



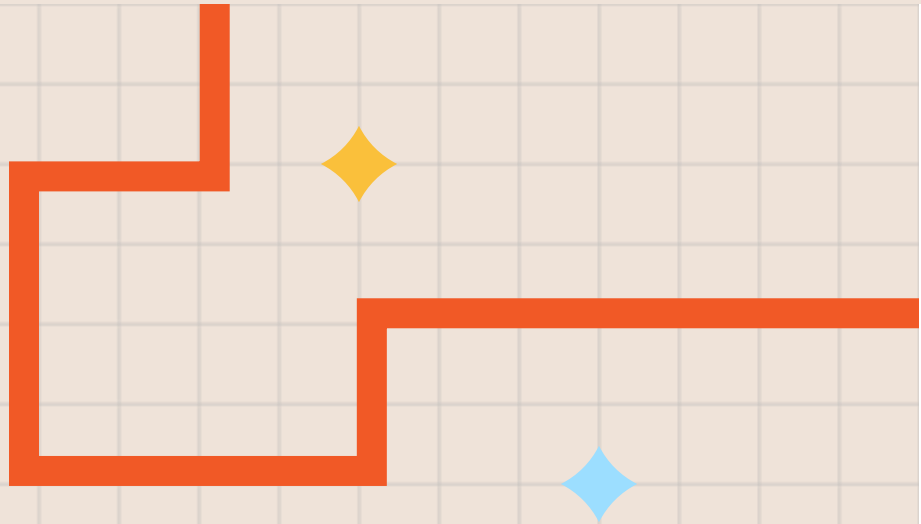
Work Integral to Business

Example: At a business consulting company, the work of the consultants is integral to the business, while the work of the IT support team and the handyperson is not.

Example: In a restaurant, the work of cooks and waitstaff is integral to the business, while the work of the interior designer and menu designer is not.



Managerial Skills Used for Personal Profit



An IC will make decisions about:



- Which jobs to take
- How to staff them
- Contract negotiation
- Purchasing and marketing



Relative Investment and Risk of Loss

Relative is the key word.

Occasional or limited investments by the worker (e.g., using their own laptop) will not make them an independent contractor.





Business Skill and Initiative Used Elsewhere

Is the worker out there on the open market selling their skills to others?



Do they have other clients?

Do they have a registered business?



A close-up photograph of a hand holding a pen, poised to write on a tablet. The background is a soft-focus view of the tablet screen and the hand's reflection.

Permanency of Relationship

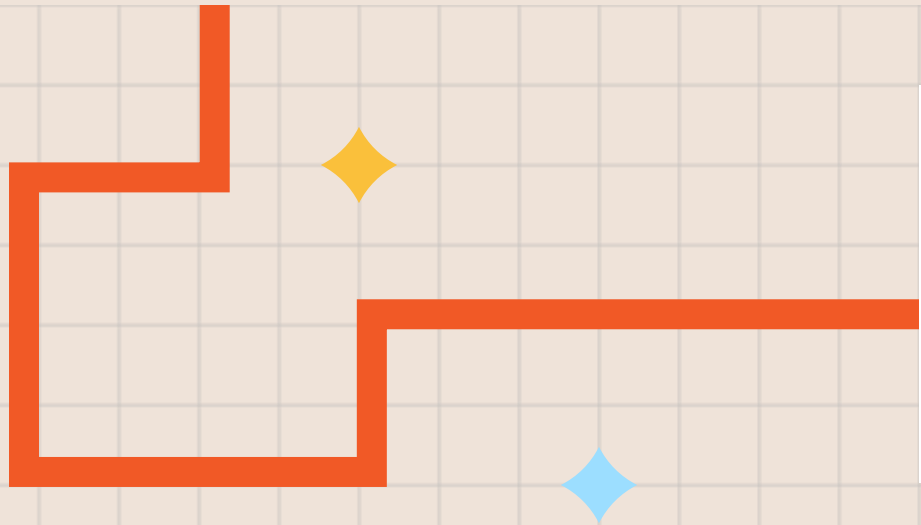


It's rare for a properly classified IC to have an open-ended, *continuous* relationship with an employer.

An employer can reuse an IC, but if the IC never stops working the classification will be suspect.

Spell out the nature of the relationship early on.

Nature and Degree of Control



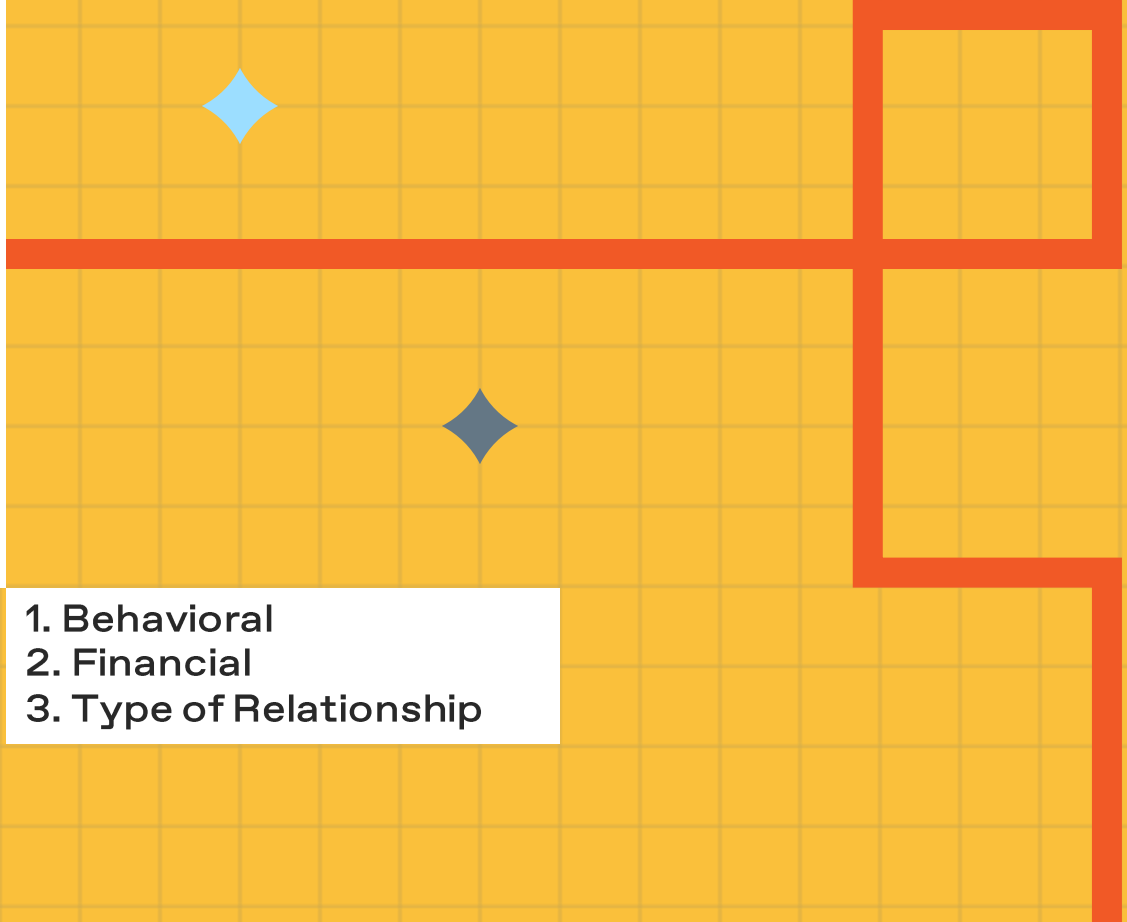
The employer can dictate the *what*.

But as much as possible they should avoid the *when*,
where, and *how*.

Poll Question

Does your
organization use
independent
contractors?

IRS Control Test

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1. Behavioral
 2. Financial
 3. Type of Relationship

Behavioral Control

Does the company control or *have the right to control* what the worker does and how the worker does their job?

- Type of instructions given
- Degree of instruction
- Evaluation systems
- Training





Financial Control

Are the business aspects of the worker's job controlled by the company?

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment





Type of Relationship

What expectations have been communicated about the relationship?

- Written contracts
- Employee benefits
- Permanency of the relationship
- Services provided are key activity of the business

The ABC Test

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- A decorative orange line starts horizontally from the left, crosses a vertical line, and then turns 90 degrees downward. A small blue diamond is positioned above the horizontal segment, and a small grey diamond is positioned below it.
- 1. No Control from Employer
 - 2. Outside Usual Course of Business
 - 3. Worker is Independently Established

ABC: The Strictest Test

(CA, MA, NJ, Many UI Depts.)

A. The worker is free from control and direction in connection with the performance of the work, both under the contract for the performance of such work and in fact;

B. The worker performs work that is outside the usual course of the hiring entity's business; *and*

C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.



Tips and Traps





Do NOT...

Give them an employee handbook

Micromanage hours

Forbid working for competitors

Use IC schemes to avoid overtime



Do...

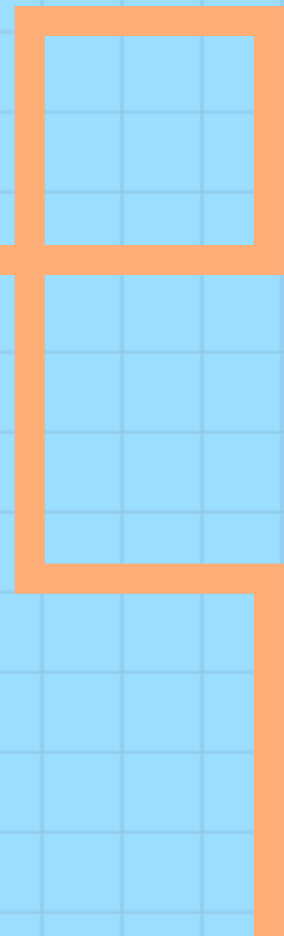
Put the relationship in writing

Provide project deadlines

Check in as necessary

Give them as much control as possible

Q+A



Thank you!

