

GUIDELINES: CONSULTANTS VS. EMPLOYEES

Review the checklist below. If a number of the following *employee* conditions exist that means CRS exercises control over the work, and the worker is an employee, not a consultant.

This is important because if the IRS determines that what we have called a “consultant” is actually an “employee” by their definition, CRS could be liable for benefits, taxes, penalties, and interest. Therefore, your attention to the detail below is necessary.

Supply this checklist with your contract for review before sending the contract for signature to the consultancy.

Name and signature of CRS individual responsible for contract (*person must have expense authorization for department requesting contract*):

1. **Compliance with instructions**, for example:

___ **Employee:** Employees receive instructions from CRS staff about how, where and when the work should be done. CRS retains the right to control how the work is done.

___ **Consultant:** Consultants determine their own method of completing CRS’s instructions, and negotiate the time frame in which to complete the work.

2. **Training**, For example:

___ **Employee** CRS often requires employees to obtain training by an experienced worker or by other means. Periodic or sporadic training of a worker by another person-either informally or formally – is indicative of an employer-employee relationship.

___ **Consultant:** Consultants use their own method to complete the job and receive no training from CRS on how to do the job on matters relating specifically to CRS.

3. **Integration** For example:

___ **Employee:** Employee services are substantially integrated into CRS’s business operations. This helps ensure the success of the business function.

___ **Consultants:** Consultants are not subjected to direction or control of CRS as an integrated employee.

4. **Services rendered personally**. For example:

___ **Employee:** The worker’s job cannot be delegated to a representative or employee of the worker. CRS has substantial interest in how the results will be achieved.

___ **Consultant:** Consultants often are firms that may delegate to one or more individuals within the firm. However, in the case of an individual consultant, the consultant would usually agree to perform the services himself or herself.

5. **Hiring, supervising, and paying assistants**. For example:

___ **Employees:** Employees do not hire, supervise, or pay their assistants.

___ **Consultants:** A consultant may hire, supervise and pay assistants to provide materials and labor. The consultant is responsible for final results.

6. **Continuing relationship**. For Example:

___ **Employee:** The employee and CRS have a continuing relationship. A continuing relationship may exist even if the work is performed at recurring though irregular intervals.

___ **Consultant:** A consultant may or may not have a continuing relationship with CRS.

7. **Set hours of work.** For Example:

___ **Employee:** CRS establishes the hours of work in which employees perform services.

___ **Consultants:** Consultants establish their own hours of work.

8. **Full-time work.** For example:

___ **Employee:** In general, employees devote substantially full time to CRS and are restricted from doing other gainful work. Notwithstanding this, an employee can work part-time for CRS.

___ **Consultant:** Consultants are free to set their own hours, working when and for whom they choose. Consultants often have more than one client.

9. **Work done on employer's premises.** For example:

___ **Employee:** CRS designates where the work will be performed. Usually the employee's base of operations is CRS location.

___ **Consultant:** Consultants usually work wherever they choose, rather than use CRS as base of operations.

10. **Sequence set.** For Example:

___ **Employee:** CRS may show control over the sequence or a certain order of work performed.

___ **Consultant:** Consultants follow their own pattern of work.

11. **Oral or written reports.** For example:

___ **Employee:** CRS usually requires employees to supply their supervisors with progress reports. CRS controls employees by requiring such reports from time to time.

___ **Consultant:** Consultants usually also provide reports. Often the frequency and content of the reports are negotiated at the time of the contract.

12. **Payments.** For example:

___ **Employee:** Payment is generally based on an hourly wage, weekly wage or a monthly wage rather than the total value of the work.

___ **Consultant:** Consultants are often paid by a lump sum for the job or on a straight commission. A payment based on hours or periodic partial payments may be selected as a convenient way of paying the lump sum. Consultants **submit invoices** describing the work completed on their own letterhead, and usually have their own employer identification numbers.

13. **Payment of business or traveling expenses.** For example:

___ **Employee:** CRS usually pays business or traveling expenses. The liability to control these expenses indicates that CRS retains the right to regulate and direct the worker's business activities.

___ **Consultant:** Some consultants who clearly are not employees require reimbursement for expenses as part of the contract. This reimbursement does not alter the employer-consultant relationship.

14. **Tools and materials.** For example:

___ **Employee:** CRS furnishes significant tools, materials, and other equipment.

___ **Consultant:** Consultants usually provide whatever they need to perform the job, including computer equipment, telephones, administrative assistance, etc.

15. **Investment.** For Example:

___ **Employee:** Employees make no significant investment in the business undertaking.

___ **Consultant:** Consultant does invest in the business undertaking. For example, they provide their own tools, obtain their own licenses and insure themselves and their work.

16. **Realization of profit or loss.** For example:

___ **Employee:** Employees earn wages, but they do not establish profit margins or risk financial losses as a result of their work for CRS.

___ **Consultant:** Consultants calculate some profit into their fees and assume real risks of economic loss due to their significant investments. The consultant, for example, may charge a lump sum to get a job done that does not cover its actual out-of-pocket costs in salaries, etc.

17. **Working for more than one firm at a time.** For example:

___ **Employee:** Employees usually provide all their services to CRS unless s/he is a part-time employee.

___ **Consultant:** Consultants generally work for several clients.

18. **Making services available to the general public.** For example:

___ **Employee:** Employees do not make their services available to the general public. Instead, they offer their services to CRS in particular.

___ **Consultant:** Consultants, like doctors, architects, lawyers and accountants, offer their services to the general public.

19. **Right to discharge.** For example:

___ **Employee:** CRS can fire employees.

___ **Consultant:** Consultants cannot be fired so long as they produce a result that meets specifications of the contract.

20. **Right to terminate.** For example:

___ **Employee:** Employees can quit their jobs at any time without incurring liability.

___ **Consultant:** Consultants must make good for failure to complete a job.