



Bureau of Human Resources  
 500 E. Capitol Avenue  
 Pierre, South Dakota 57501-5070  
 Phone: 605.773.3148  
 Fax: 605.773.4344  
<http://bhr.sd.gov>

**INDEPENDENT CONTRACTOR OR EMPLOYEE  
 20 FACTORS OF CONTROL: WORKSHEET**

In general, when determining if a relationship with an individual is that of an employer-employee or an independent contractor, the State of South Dakota and the Internal Revenue Service examine two key elements: the level of control exercised over the worker and whether the individual has a previously established independent business. The State bears the burden to prove each of the two elements. The South Dakota Bureau of Human Resources (BHR) has developed the 20 Factors of Control Worksheet based on information from the Internal Revenue Service. These are the factors the IRS considers when it performs a review of an independent contractor service agreement.

BHR has developed a form entitled "Independent Contractor or Employee 20 Factors of Control: Additional Information" to provide agencies with additional guidance for each of the 20 factors of control. Agencies requesting additional information or assistance may contact legal counsel or Aaron Arnold, BHR's Director of Legal and Human Resource Services, at 605-773-4918 or [Aaron.Arnold@state.sd.us](mailto:Aaron.Arnold@state.sd.us).

Notwithstanding questions 13-16, if you answer "yes" to any of the following questions, you should seek legal assistance or contact the Bureau of Human Resources. These questions are designed to assist you in determining if you can prove that the State lacks control over the individual **and** the individual has a preexisting independent business.

**Behavioral Control**

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| <b>1. Instruction:</b> Will you have the right to give the worker instructions about when, where, and how to work?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>2. Training:</b> Will you train the worker to do the job in a particular way?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>3. Order of Sequence Set:</b> Will you have the right to determine the order in which the services are performed?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>4. Oral or Written Reports:</b> Will the worker be required to provide you reports accounting for his or her actions, either orally or in writing (generally, this does not include deliverables such as a written report)? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>5. Set Hours of Work:</b> Will you have the right to set the worker's hours?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>6. Services Rendered Personally:</b> Will the worker be required to provide the services personally, as opposed to delegating tasks to someone else?  | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
| <b>7. Full Time Required:</b> Will the worker be required to spend all of his or her time on your job?   | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |

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| <b>8. Doing Work on Employer's Premises:</b> Will the worker be required to work on your premises, or do you control the route or location where the work must be performed? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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**Financial Control**

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|---|---------------------------------|--------------------------------|
| <b>9. Payment by Hour, Week, or Month:</b> Will you be paying the worker by the hour, week, or month? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>10. Payment of Business or Traveling Expenses:</b> Will you be paying the worker's business or travel expenses? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>11. Furnishing of Tools and Materials:</b> Will you be providing the worker with equipment, tools, or materials? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>12. Hiring, Supervising, and Paying Assistants:</b> If needed, will you hire, supervise, and pay the worker's assistance? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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**If you answer "yes" to all of the following four questions, you are likely entering into an independent contractor relationship:**

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| <b>13. Significant Investment:</b> Does the worker have an investment in the equipment or facilities used to perform the work? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>14. Realization of Profit or Loss:</b> Can the worker realize a profit or suffer a loss as a result of the work, aside from the money earned from the contract? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>15. Working for More Than One Firm at a Time:</b> Does the individual work for more than one company at a time? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>16. Making Service Available to the General Public:</b> Does the worker offer services to the general public? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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**Relationship of the Parties**

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| <b>17. Integration:</b> Are the services the worker will provide so important to your agency that the services have become a necessary part of the business of the agency? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>18. Continuing Relationship:</b> Is there an ongoing relationship between your agency and the worker? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>19. Right to Discharge:</b> Will you have the right to terminate the relationship prior to completion without cause? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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| <b>20. Right to Terminate:</b> Will the worker have the right to terminate the relationship without cause at any time without incurring liability? | YES<br><input type="checkbox"/> | NO<br><input type="checkbox"/> |
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