

BUSINESS PROPOSAL FOR A DEFINITION OF INDEPENDENT CONTRACTOR

It is in the best interests of workers, businesses, and government to have clear, objective and certain criteria identifying an independent contractor relationship as compared to an employment relationship. Such criteria will reduce unnecessary and costly litigation, as well as confusion in the workforce marketplace, among agencies and within the courts. To this end, the following provisions are to ensure that workers who are in fact “employees” will be properly classified as such and afforded the legal protections and obligations that apply to such status, while workers who desire to be, and meet the criteria set out below for being, independent contractors will be entitled to the freedoms and obligated for the responsibilities arising from such status.

For the purposes of this section, an independent contractor means any person or organization, including a sole proprietor, partnership, limited liability company, corporation or other entity, that undertakes, orally or in writing, to perform services for or in connection with another party in a manner consistent with the requirements of this section.

Whenever an individual meets at least seven of the following criteria stipulated by this section, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work. However, failure to meet the requisite criteria does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

1. The individual operates an independent business through which he provides services for or in connection with the contracting party.
2. The individual represents his services as self-employment available to others, including through the use of a platform app to obtain work opportunities or as a lead generation service.
3. The individual accepts responsibility for all tax liability associated with payments received from or through the contracting party.
4. The individual is responsible for obtaining and maintaining any required registration, certification, licenses or other authorization necessary for the legal performance of the services rendered by him as the contractor.
5. The individual is not insured under the contracting party's health insurance or workers' compensation insurance coverages and is not covered for unemployment insurance benefits.
6. The individual has the right to accept or decline requests for services by or through the contracting party and is able to perform services for or through other parties or can accept work from and perform work for other businesses and individuals besides the contracting party,

even if the individual voluntarily chooses not to exercise this right or is temporarily restricted from doing so.

7. The contracting party does not direct or oversee the performance, methods or processes the individual uses to perform services.

8. The contracting party has the right to impose quality standards or a deadline for completion of services performed, or both, but the individual determines the days worked and the time periods of work.

9. The individual furnishes the major tools or items of equipment needed to perform the work.

10. The individual is paid a fixed or contract rate for the work he performs and the contracting party does not pay the individual a salary or wages based on an hourly rate.

11. The individual is responsible for the majority of expenses he incurs in performing the services, unless the expenses are reimbursed under an express provision of a written contract between the parties or the expenses reimbursed are commonly reimbursed under industry practice.

12. The individual can use such assistants as he deems proper for the performance of the work and is directly responsible for their supervision and compensation.

Obtainment of an Independent Contractor Certificate from the state is optional and is not required to establish independent contractor status. Any contracting party or independent contractor may rely on the provisions in this Section for the purpose of establishing an employment or independent contractor relationship.