

## Independent Contractor/Consultant Agreement (Pro-Client)

by Practical Law Labor & Employment and Practical Law Commercial

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An independent contractor agreement between an individual contractor and a client company for consulting or other services. This Standard Document is drafted in favor of the client company and is based on federal law. State and local law may impose different or additional requirements on independent contractor classification and agreements. For more information on independent contractors under state law, see [Independent Contractor Toolkit: State-Specific Materials](#). This Standard Document has integrated notes with important explanations and drafting tips.

### DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

This independent contractor or consultant agreement is a short-form letter agreement between an individual independent contractor and a client (assumed to be a corporate entity in this document) for consulting or other services. It is drafted in an informal letter format and may be appropriate for a short-term engagement or specific project. It is based on federal law. This Standard Document assumes that the independent contractor is genuinely self-employed and is not an employee of the client company (see Drafting Note, Independent Contractor Status).

For more information on the classification of independent contractors under federal law, see:

- [Practice Note, Independent Contractor Classification](#).
- [Evaluating and Engaging Independent Contractors Checklist](#).
- [Standard Document, Questionnaire to Evaluate Independent Contractor Status Under the FLSA](#).

State and local law may impose different or additional requirements, including language that must be included in independent contractor agreements. Companies engaging independent contractors should consider applicable state and local law with this Standard Document. For more information on state law requirements for independent contractors,

see [Independent Contractors: State Q&A Tool](#) and [Independent Contractor Toolkit: State-Specific Materials](#).

This Standard Document is intended for the engagement of an individual independent contractor. The individual may have organized their business as a sole proprietorship or limited liability company (LLC), for example, and may have hired or engaged employees or contractors to assist in providing services, but they are treated as an individual for purposes of this agreement. For a professional services agreement between two business entities, see [Standard Document, Professional Services Agreement](#). For a short-form services agreement between entities, see [Standard Document, Services Agreement \(Pro-Customer\)](#).

### Independent Contractor Status

Companies engaging independent contractors should ensure that the arrangement satisfies the requirements for independent contractor status under federal, state, and local law.

Even if the parties agree in writing that their arrangement is an independent contractor relationship, the Department of Labor (DOL), the Internal Revenue Service (IRS), state and local



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agencies, and the courts will examine the actual nature of the working relationship and may find that the worker is an employee rather than an independent contractor. An independent contractor determination is highly fact-specific but generally involves determining if the worker is economically dependent on the company by evaluating various factors, including the company's degree of control over the worker.

There is no single test to evaluate independent contractor status for all purposes and compliance is often complicated by the fact that different tests may apply. Federal courts and the DOL apply the economic realities test to questions of independent contractor classification under the Fair Labor Standards Act (FLSA) (see *Bartels v. Birmingham*, 332 U.S. 126, 130 (1947); *Keller v. Miri Microsystems LLC*, 781 F.3d 799 (6th Cir. 2015)). Though the precise factors evaluated may differ among jurisdictions, the economic realities test generally involves consideration of the following six factors:

- The degree of control.
- The relative investment in facilities.
- The worker's opportunity for profit and loss.
- The permanency of the parties' relationship.
- The skill required for the work.
- Whether the worker's services are integral to the company's business.

(*United States v. Silk*, 331 U.S. 704, 717-19 (1947); [DOL Fact Sheet #13: Employment Relationship Under the FLSA](#) (DOL Fact Sheet #13) (adding a seventh factor, the degree of independent business organization and operation).)

No single factor determines a worker's status as an employee or independent contractor and courts must focus on the totality of the working relationship (see, for example, *Keller*, 781 F.3d 799, 806-07; *Gayle v. Harry's Nurses Registry, Inc.*, 594 F. App'x 714, 717 (2d Cir. 2014); *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308, 1311-12 (11th Cir. 2013)). The DOL has also stated that the time or mode of pay does not control and that the following factors are immaterial to an independent contractor status determination:

- The place where work is performed.
- The absence of a formal employment agreement.

- Whether the worker is licensed by a state or local government.

([DOL Fact Sheet #13.](#))

On January 7, 2021, the DOL published a final rule expressly adopting and clarifying the economic realities test. Under the Biden administration, however, the agency **withdrew the rule before its effective date**. For more information on the now-withdrawn final rule, see [Practice Note, Independent Contractor Classification: Impact of the Biden Administration DOL on the Independent Contractor Final Rule](#).

**Employers and employment counsel should continue to monitor developments affecting independent contractor classification under the Biden administration, including any new rulemaking.**

For more information on the economic realities test under the FLSA, see [Practice Note, Independent Contractor Classification: The Economic Realities Test: The FLSA Standard](#).

The IRS's general rule is that an individual is an independent contractor if the person for whom the services are performed has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. In making this determination, the IRS examines several factors grouped into three general categories:

- Behavioral control, meaning the right to control the manner in which work is performed.
- Financial control, meaning the right to control the economic aspects of a worker's activities.
- The relationship between the parties.

For more information on the IRS test, see [Practice Note, Independent Contractor Classification: The Control Test: The IRS Standard](#).

Other tests to determine independent contractor status include:

- The common law *Darden* test.
- The 20-factor common law test.
- The hybrid test.
- The ABC test.

Each test requires the balancing of multiple factors. Certain factors may be given more or less weight depending on the particular engagement or industry

custom. For more information, see [Practice Note, Independent Contractor Classification: Tests for Independent Contractor Status](#).

For information on tests for independent contractor status under state law, see [Independent Contractors: State Q&A Tool: Question 4](#).

### Risks of Misclassification

Independent contractors can provide a significant financial benefit to a company in part because independent contractors are not entitled to many of the rights and protections available to employees (see [Practice Note, Independent Contractor Classification: Benefits of Engaging Independent Contractors](#)). This is also the reason, however, that the DOL, the IRS, state and local agencies, and the courts often construe independent contractor status narrowly and impose significant penalties for misclassifying employees as independent contractors. Penalties can include:

- Back pay, including unpaid minimum wage and overtime compensation.
- The value of employee benefits.
- Unpaid taxes and contributions.
- Penalties and interest.

For more information on misclassification, see [Practice Note, Independent Contractor Classification: Consequences of Misclassification](#).

### Arbitration Provision

The company may want independent contractors to agree to resolve disputes arising out of the agreement or its breach or termination by binding arbitration rather than in court. If using that approach, counsel should modify this Standard Document to include an arbitration provision or to reference a separate, stand-alone arbitration agreement. (See [Drafting Note, Arbitration](#).)

### Bracketed Text

Counsel should replace bracketed text in ALL CAPS with information specific to the particular circumstances. Bracketed text in sentence case is optional or alternative language that counsel should include, modify, or delete, as appropriate. A forward slash in bracketed text indicates that counsel should choose from among two or more alternative words or phrases.

[INDEPENDENT CONTRACTOR NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[DATE]

Dear [INDEPENDENT CONTRACTOR NAME],

This letter agreement (this “**Agreement**”) sets forth the terms and conditions whereby you agree to provide certain services (as described in Schedule 1) to [CLIENT COMPANY NAME], with offices located at [ADDRESS], a [STATE OF ORGANIZATION] [ENTITY TYPE] (the “**Company**”).

#### 1. SERVICES.

1.1 The Company hereby engages you, and you hereby accept such engagement, as an independent contractor to provide certain services to the Company on the terms and conditions set forth in this Agreement.

1.2 You shall provide to the Company the services set forth in Schedule 1 (the “**Services**”).

1.3 The Company shall not control the manner or means by which you [or your employees or contractors] perform the Services [, including but not limited to the time and place you perform the Services].

1.4 As set forth in Schedule 1, the Company shall provide you with access to its premises, materials, information, and systems to the extent necessary for the performance of the Services. Unless otherwise specified in Schedule 1, you shall furnish, at your own expense, the materials, equipment, and other resources necessary to perform the Services.

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1.5 You shall comply with all [third-party access] rules and procedures communicated to you in writing by the Company, including those related to safety, security, and confidentiality.

### DRAFTING NOTE: SERVICES

Section 1 should generally contain provisions that support the worker's status as an independent contractor, as appropriate for the particular engagement (see Drafting Note, Independent Contractor Status).

This short-form agreement assumes that the independent contractor is being engaged for a single project. If the parties enter into an ongoing engagement covering multiple successive projects or the engagement is repeatedly extended, the parties should evaluate whether the independent contractor should be reclassified as an employee (see Drafting Note, Independent Contractor Status).

The optional language in Section 1.3 assumes the independent contractor has hired employees and contractors to assist in the provision of services. Often where that is the case, the independent contractor has organized the business as a sole proprietorship or LLC.

Section 1.5 requires the independent contractor to comply with company rules and procedures applicable to contractors and other third parties. Companies should be aware, however, that controlling or restricting an independent contractor's activities is arguably characteristic of an employment relationship and could undermine the independent contractor classification. Similarly, simply providing an independent contractor with an employee handbook does not support the company's position that the relationships are distinct.

Best practice is to establish separate rules and procedures applicable to non-employees, including independent contractors, vendors, customers, and clients who either:

- Have access to company premises, equipment, information, or systems, whether on-site or remote.
- Interact with company employees or customers.

Third-party rules and procedures should focus on issues associated with access, particularly those relating to safety, security, and confidentiality. For example, companies generally may include rules and procedures concerning:

- Entry and exit procedures, such as security gates and parking areas.
- Evacuation and other emergency procedures.
- Weapons, alcohol, tobacco, and drug-free workplace rules.
- Anti-harassment rules.

Companies generally should not include rules and procedures characteristic of an employment relationship, such as those concerning:

- Pay periods and paydays. Independent contractors should be paid by accounts payable, not payroll.
- Dress codes and grooming policies (although in some circumstances a uniform, logo, or similar requirement may be appropriate).
- Disciplinary policies.
- Attendance and leave policies.
- Employee benefits such as paid time off and health insurance.

For more information, see [Evaluating and Engaging Independent Contractors Checklist](#).

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