Corporate Compliance Forms and Tools
IRS Test for Determining Status as Employee or Independent Contractor

The determination of whether someone performing services for an organization is an employee of that organization or can properly be considered to be an independent contractor of that organization is determined by the Internal Revenue Service (IRS). Table 1 lists the factors used by the IRS in making this determination. You should consult with legal counsel to determine whether there may be different or additional state law requirements that are applicable.

Behavioral control	Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of: 1. *Instructions the business gives the worker.* All of the following are examples of types of instructions about how to do work: a. When and where to do the work, b. What tools or equipment to use, c. What workers to hire to assist with the work, d. Where to purchase supplies and services, e. What work must be performed by a specified individual, and f. What order or sequence to follow. 2. *Training the business gives the worker.* An employee may be trained to perform services in a particular manner whereas independent contractors ordinarily use their own methods.

Financial control	Facts that show whether the business has a right to control the business aspects of the worker's job include: 1. *The extent to which the worker has unreimbursed business expenses* Independent contractors are more likely to have unreimbursed expenses than employees. 2. *The extent of the worker's investment.* An employee usually has no investment in the work other than their own time, whereas an independent contractor often has a significant investment in the facilities they use in performing services for someone else. 3. *The extent to which the worker makes services available to the relevant market* An independent contractor is generally free to seek out business opportunities by advertising and maintaining a visible business location or website, and is available to work in the relevant market. 4. *How the business pays the worker.* An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time whereas an independent contractor is usually paid a flat fee for the job, although some professions pay independent contractors hourly. 5. *The extent to which the worker can realize a profit or loss* Since an employer usually provides employees a workplace, tools, materials, equipment, and supplies needed for the work, and generally pays the costs of doing business, employees do not have an opportunity to make a profit or loss. An independent contractor can make a profit or loss.
Type of relationship	Facts that show the parties' type of relationship include: 1. *Written contracts describing the relationship the parties intended to create* In close cases, a written contract can make a difference. 2. *Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay*. A true independent contractor will finance their own benefits out of the overall profits of the enterprise. 3. *The permanency of the relationship.* If the company engages a worker with the expectation that the relationship will continue for a specific project or period, this is generally considered evidence that the intent was to create an independent contractor relationship. 4. *The extent to which services performed by the worker are a key aspect of the regular business of the company* If a worker provides services that are a key aspect of the company's regular business activity, it is more likely that the company will have the right to direct and control their activities and therefore they will be considered an employee.

Table 1: IRS Test