**Independent Contractor Fact Sheet**

1. **Why use an independent contractor?**

Generally, an independent contractor is less expensive and places a lower administrative burden on the business than an employee

* 1. Business does not to pay or withhold employee payroll taxes, such as Social Security and Medicare, or federal unemployment insurance taxes for independent contractors.
  2. Business generally does not provide unemployment insurance benefits or other employee benefits.
  3. Laws applicable to employer-employee relationship (e.g., minimum wage requirements) do not apply.

1. **What qualifies someone as an independent contractor?**
   1. Generally, independent contractor status depends on several factors grouped into three general categories:
   2. **Behavioral Control** means the right to control the manner in which work is performed, including factors such as the type and degree of training and instructions given, how/when/where work is performed, and equipment used.
   3. **Financial Control** means the right to control the economic aspects of a worker’s activities, including factors such as reimbursement of business expenses, opportunity for profit and risk of loss, non-exclusivity, and method of payment. Independent contractors often:
      1. Make significant investments in the tools used to perform their work
      2. Are responsible for their own expenses/overhead
      3. Take the risk of bearing losses in connection with their engagements
      4. Are not bound by exclusivity obligations, and
      5. Are compensated through flat fees rather than wages.
   4. **Relationship Between the Parties** includes factors such as:
   5. Written Contracts — While written contracts are not sufficient to determine a worker’s status, they can help indicate the parties’ intent.
   6. Employee Benefits — Independent contractors typically are not entitled to receive retirement, health insurance and other similar benefits an employer provides to its employees.
   7. Permanency of relationship — independent contractors are typically engaged for specified periods or projects and cannot be discharged except under the terms of their contract.
2. **Key points to remember when hiring**
   1. Merely identifying a worker as an independent contractor in an agreement does not ensure that the worker is properly classified.
   2. Businesses that use many independent contractors instead of employees to provide core services may be a red flag for substantial liability risks during due diligence which may deter investors or hinder fundraising efforts. Accordingly, it is essential to have a written agreement in place with any independent contractor to show that the arrangement clearly conforms to the factors indicated above.
   3. If the IRS, the federal Department of Labor, or a state Department of Labor determines a worker was improperly classified as an independent contractor, it may require the company to:
      1. Reclassify the worker as an employee and provide all the entitlements of employment;
      2. Pay back wages and overtime;
      3. Pay back taxes and penalties, including payroll taxes;
      4. Provide benefits to the same extent as provided to employees, including retroactive compensation for past lost coverage or other benefits; and
      5. Comply with all other laws applicable to employees.
   4. If it is appropriate to retain an independent contractor, the business should draft an appropriate contract to govern the independent contractor relationship and ensure that it accurately reflects the parties’ relationship.