**Appendix E - TWC Independent Contractor Test**

(The following version of Form C-8 is identical in content, but not in format, to the Form C-8 adopted by the Texas Workforce Commission and published in the Texas Register as part of the Payday Rules. That test may be found on the Internet in PDF format at <http://www.texasworkforce.org/ui/tax/forms/c8.pdf> (PDF). Employers may also request a copy in printed form by asking for Form C-8 from "Texas Workforce Commission, Tax Department, 101 E. 15th Street, Austin, Texas, 78778".)

**EMPLOYMENT STATUS - A COMPARATIVE APPROACH**

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| Under the common law test, a worker is an employee if the purchaser of that worker's service has the right to direct or control the worker, both as to the final results and as to the details of when, where, and how the work is done. Control need not actually be exercised; rather, if the service recipient has the right to control, employment may be shown. | Depending upon the type of business and the services performed, not all of the twenty common law factors may apply. In addition, the weight assigned to a specific factor may vary depending upon the facts of the case. If an employment relationship exists, it does not matter that the employee is called something different, such as: agent, contract labor, subcontractor, or independent contractor. |
| **1. INSTRUCTIONS:** | **11. ORAL OR WRITTEN REPORTS:** |
| An Employee receives instructions about when, where and how the work is to be performed.*An Independent Contractor does the job his or her own way with few, if any, instructions as to the details or methods of the work.* | An Employee may be required to submit regular oral or written reports about the work in progress.*An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress.* |
| **2. TRAINING:** | **12.PAYMENT BY THE HOUR, WEEK, OR MONTH:** |
| Employees are often trained by a more experienced employee or are required to attend meetings or take training courses.*An Independent Contractor uses his or her own methods and thus need not receive training from the purchaser of those services.* | An Employee is typically paid by the employer in regular amounts at stated intervals, such as by the hour or week.*An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid.* |
| **3. INTEGRATION:** | **13. PAYMENT OF BUSINESS & TRAVEL EXPENSE:** |
| Services of an Employee are usually merged into the firm's overall operation; the firm's success depends on those Employee services.*An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.* | An Employee's business and travel expenses are either paid directly or reimbursed by the employer.*Independent Contractors normally pay all of their own business and travel expenses without reimbursement.* |
| **4. SERVICES RENDERED PERSONALLY:** | **14. FURNISHING TOOLS & EQUIPMENT:** |
| An Employee's services must be rendered personally; Employees do not hire their own substitutes or delegate work to them.*A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.* | Employees are furnished all necessary tools, materials, and equipment by their employer.*An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.* |
| **5. HIRING, SUPERVISING & PAYING HELPERS:** | **15. SIGNIFICANT INVESTMENT:** |
| An Employee may act as a foreman for the employer but, if so, helpers are paid with the employer's funds.*Independent Contractors select, hire, pay, and supervise any helpers used and are responsible for the results of the helpers' labor.* | An Employee generally has little or no investment in the business. Instead, an Employee is economically dependent on the employer.*True Independent Contractors usually have a substantial financial investment in their independent business.* |
| **6. CONTINUING RELATIONSHIP:** | **16. REALIZE PROFIT OR LOSS:** |
| An Employee often continues to work for the same employer month after month or year after year.*An Independent Contractor is usually hired to do one job of limited or indefinite duration and has no expectation of continuing work.* | An Employee does not ordinarily realize a profit or loss in the business. Rather, Employees are paid for services rendered.*An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.* |
| **7. SET HOURS OF WORK:** | **17. WORKING FOR MORE THAN ONE FIRM AT A TIME:** |
| An Employee may work "on call" or during hours and days as set by the employer.*A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.* | An Employee ordinarily works for one employer at a time and may be prohibited from joining a competitor.*An Independent Contractor often works for more than one client or firm at the same time and is not subject to a non-competition rule.* |
| **8. FULL TIME REQUIRED:** | **18. MAKING SERVICE AVAILABLE TO THE PUBLIC:** |
| An Employee ordinarily devotes full-time service to the employer, or the employer may have a priority on the Employee's time.*A true Independent Contractor cannot be required to devote full-time service to one firm exclusively.* | An Employee does not make his or her services available to the public except through the employer's company.*An Independent Contractor may advertise, carry business cards, hang out a shingle, or hold a separate business license.* |
| **9. LOCATION WHERE SERVICES PERFORMED:** | **19. RIGHT TO DISCHARGE WITHOUT LIABILITY:** |
| Employment is indicated if the employer has the right to mandate where services are performed.*Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.* | An Employee can be discharged at any time without liability on the employer's part.*If the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.* |
| **10. ORDER OR SEQUENCE SET:** | **20. RIGHT TO QUIT WITHOUT LIABILITY:** |
| An Employee performs services in the order or sequence set by the employer. This shows control by the employer.*A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.* | An Employee may quit work at any time without liability on the Employee's part.*An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.* |

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(Source: 40 T.A.C. § 821.5, adopted to be effective June 1, 1998, as published in the Texas Register, May 29, 1998, 23 TexReg 5732.)