

Section 1706 New Independent Contractor Common Law Factors with Explanations for Engineering Consultants *

General Rule: Client does not have behavioral or financial control over the Consultant and their business relationship is not an employer – employee relationship.

Met?	General Relationship Factor	Explanation
NO	Services are not key aspects of the Client's business	Consultant is usually a subject matter expert brought in to help the Client do something it has not before, has trouble completing with its current staff, or to improve the capabilities of its staff through mentoring by a subject matter expert. The Consultant's work is controlled by the statement of work in the contract and not by direct supervision.

Met?	Behavioral Control Factors	Explanation
	1. No training or instruction	Consultant uses his own methods and receives no technical training from the purchasers of his services. Safety and security briefings applicable to all outside vendors are acceptable.
	2. Statement of Work	Consultant receives a statement of work as part of the contract as opposed to work assignments by a supervisor.
	3. No method instructions	Consultant controls how the work results are achieved. The client may provide job specifications to supplement the Statement of Work.
	4. Disputes controlled by contract	Written contract between Client and Consultant specifies method (court or mediation) of dispute resolution.
	5. No status reports	Consultant is not required to provide periodic status reports. Consultant provides contractually specified work products including documents. Consultant may include a report with his invoice describing work products delivered during the time period of that invoice.
	6. No daily routine	Consultant sets own hours and resolves multiple client time conflicts.
	7. Consultant determines service location	Consultant determines primary work location unless dictated by government security or other overarching considerations (e.g. providing training at a client site, testing or integration in a client lab, etc.).
	8. No mandatory meetings	Consultant may be invited to staff meetings and is free to decline or attend based on relevancy to his contractual statement of work. Consultant may be required to present or participate in design review meetings as part of completing his statement of work.
NO	9. Consultant may use substitutes or helpers	Independent Engineering Consultants are engaged for their individual expertise and thus generally must provide the services themselves.
	10. Hires own assistants	Usually for support services such as accounting or lawyers.
	11. No approval required	Consultants are free to engage their own support services or hire assistants.
	12. Pays own assistants	Consultants pay for their own support services, assistants, and employees.
	13. No reimbursement for assistants	Consultant factors all business costs into fees charged including costs for their own support services, assistants, and employees.

Met?	Financial Control Factors	Explanation
	1. Consultant uses own equipment, supplies, materials, and property	Consultants furnish their own equipment (computers, software, etc.), supplies (books, notebooks, paper, pens, etc.), materials (prototype PCBs, circuit elements, etc.), and property (office, etc.). May be leased.
	2. Consultant does not lease from Client	Consultant does not lease equipment, space, or a facility from Client
	3. Consultant pays own expenses	With possible exception for requested out of the area travel, Consultant pays all his own business expenses.

	4. Client does not pay Consultant expenses	With possible exception for requested out of the area travel, Consultant pays all his own business expenses.
	5. Consultant is not paid a salary or hourly wage	Consultant is paid based on contractual terms which may be a fixed fee for a well defined project, a consulting fee per unit time (hour, day, etc.) for less defined work, or a retainer.
	6. Consultant does not receive advances	Consultant may receive prepayment on a retainer contract, but does not receive advances on a draw account for sales commissions.
	7. Customer pays Client	Consultant does not receive Customer payment for his Client.
	8. Consultant pays taxes	Consultant has own payroll service to pay withholding or makes quarterly estimated tax payments for federal, state, and local income taxes, FICA including self-employment tax if applicable, and all unemployment and disability taxes (FUTA, state unemployment, SDI, etc.) if not exempt. Consultant has any required city business licenses.
	9. Consultant can suffer financial loss	Consultant has investment in an office, computers and other equipment that can be damaged or break prematurely. In addition, Consultant has general and professional liability exposure, which becomes a financial risk, an annual expense for insurance, or both.
	10. Consultant sets own fees	Consultant sets his own fixed prices and consulting fees.

Met?	Relationship Factors	Explanation
	1. Consultant does not receive benefits	Consultant is paid based on contractually specified fixed fee or consulting fee per unit time only and does not receive from the Client any benefits such as: paid vacations, sick pay, paid holidays, personal days, pensions, insurance benefits, or bonuses.
	2. Contract termination controlled by contract	Contracts contain termination clauses and generally allow for stop work orders to protect Clients from contract cancellations by their Customers. Contracts are usually limited in time to a year or less and end with their expiration date or delivery of the required work product.
	3. Consultant offers services to multiple Clients	Consultant offers services to all possible Clients except where there may be a conflict of interest. Consultants are free to choose Clients without notification to any current or past Clients, but are required by professional ethics to report any possible conflicts of interest.
	4. Consultant follows professional ethics on competition	Consultant is bound by professional ethics to avoid conflicts of interest, including competing with a current or recent past Client. Start-up companies are especially vulnerable and will contractually require non-competition for up to five years after completion of the contract.
	5. Consultant is not a union member	Consultant is an independent business. There is no union for independent business.
	6. Advertises	Consultant advertises services publically using one or more methods, such as business web site, social media, listing in consulting directory, business cards, business signs, print ads, direct mail, etc.
YES	7. No piecework	This question is not applicable.
	8. Work products go to Client	Consultants may produce reports or other documentation, software, or hardware for Clients. All work products are delivered to the Client.
	9. Work for hire products owned by Client	Work produced under work for hire contract terms is owned by the Client and presented to their Customer under the Client's business name. A Consultant's proprietary product being supplied under license to a Client would be presented to the Client's Customer under the Consultant's business name.
	10. Relationship ends per contract terms	Consultant engagements with a Client end when the contract time period expires, the delivery of all required work products, or contract termination in accord with the termination clauses of the contract.