

## Common Law Employee Attestation

I \_\_\_\_\_, hereby swear that I am the owner of \_\_\_\_\_,  
(Full Legal Name) (Name of Business)  
 which is a \_\_\_\_\_ and located at \_\_\_\_\_, \_\_\_\_\_, NY \_\_\_\_\_.  
(Type of Organization, e.g. S Corp) (Street Address) (City) (Zip Code)

I further attest that I:

1. Have performed one or more of the following (check the box(es) to indicate);
  - Consulted with my tax or legal advisor to ensure that I understand the consequences of being designated a common law employee, or;
  - Obtained a ruling from the Internal Revenue Service (IRS) under the SS-8 program that I am a common-law employee (please attach)
  - Other. Please explain: \_\_\_\_\_
  
2. Am not a sole proprietor or a partner in a partnership who is excluded from the definition of an employee for the purposes of an employee benefit plan, under 29 C.F.R. § 2510.3-3(b) and (c) (1) or (2).
  
3. Meet all of the following definitions of employee, including a common law employee:
  - o 42 USC 300 gg – 91(d)(5): The term “employee” has the meaning given such term under section 3(6) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(6)], and;
  - o 29 U.S.C. 1002 (6): The term “employee” means any individual employed by an employer, and;
  - o A common law employee is anyone who performs services for an employer, if the employer can control what will be done and how it is done. The common law employee tests to determine control, includes behavioral control, financial control and the type of relationship between the parties. See IRS Revenue Ruling 87-41. Also IRS information at the following web addresses:  
<https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Employee-Common-Law-Employee>  
<https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>
  
4. File the following income tax form(s) for this business with the IRS, check the appropriate box to indicate:
  - Schedule C or Schedule F
  - 1065 and K-1 (1065)
  - 1120S or  1120S and K-1 (1120S)
  - 1120
  - Other: Please explain: \_\_\_\_\_
  
5. Am or am not included on the NYS-45 as an employee of this business, as follows:
  - Included on the NYS-45
  - Not included on the NYS-45

I hereby state that the above information is true, to the best of my knowledge. I further confirm that the information here is both accurate and complete, and I have not omitted any relevant information.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date