

Is your worker an employee or a contractor?



This is an important area for business owners and one that the IRS continues to focus on to make sure that companies are following the rules.

Are you properly classifying your workers?

Below is the 20 factors test that the IRS uses to determine whether a worker is an employee or an independent contractor. These factors should be used as your guide. For example, if an employer can instruct the worker about when, where, and how the worker performs work, this indicates an employer-employee relationship. Independent contractors have more control over their work. Strong integration of the worker's services into operations of the person who hired the worker indicates an employer-employee relationship. Read on and make sure that you are classifying your workers correctly.

1) Instructions

If an employer can instruct the worker about when, where, and how the worker performs work, this indicates an employer-employee relationship. Independent contractors have more control over their work.

2) Training and Meeting

Providing worker training and requiring the worker to attend meetings indicates the existence of an employer-employee relationship.

3) Integration of work performed into firm operations

Strong integration of the worker's services into operations of the person who hired the worker indicates an employer-employee relationship.

4) Personal Performance of Services

Employees must personally perform services. The same requirement might not be expected of an independent contractor, although there are exceptions. This factor alone is frequently not determinative.

5) Personnel Control

A firm's control over the hiring, supervision, and payment of the worker's assistants suggest an employer-employee relationship. Independent contractors typically maintain and control their own staff.

6) Duration of Working Relationship

A continual, long-term work relationship implies an employer-employee relationship. Such a long-term relationship may also exist with an independent contractor. Therefore, this factor taken along is not determinative.

7) Work Schedule

An established work schedule for the worker indicates that an employer-employee relationship exists. Independent contractors generally retain more freedom in scheduling the performance of their services to a firm.

8) Hours of Service Required

Requiring substantially full-time work from the worker in the performance of services to the firm is indicative of an employer-employee relationship. Conversely, part-time hours worked for one firm or person while the worker also provides work for other firms or persons indicate that the worker may be an independent contractor.

9) Location of Services

Requiring the worker to perform services at the firm's or person's own location suggests an employer-employee relationship. However, because employees can only perform some types of work at the firm's or person's worksite, this factor alone is not determinative.

10) Control over Work Technique

Control by the firm or person over the worker's technique or order of tasks indicates that an employer-employee relationship exists. A worker who has

control over the technique or task order in the performance of services suggests that the worker maybe an independent contractor. Requiring regular written or verbal reports from the worker to other firm personnel or persons associated with the person for whom the worker provides services indicates an employer-employee relationship. However, requiring progress reports by an independent contractor is also common. Therefore, this factor alone is not determinative.

11) Method of Payment

Payment at regular intervals (hourly, weekly, or monthly) suggests an employer-employee relationship. Alternatively, payment to the worker based on the particular job or project or based on invoices issued by the worker suggests an independent contractor relationship.

12) Periodic Reporting

Requiring regular written or verbal reports from the worker to other firm personnel or persons associated with the person for whom the worker provides services indicates an employer-employee relationship. However, requiring progress reports by an independent contractor is also common. Therefore, this factor alone is not determinative.

13) Work-related Expenses

Payment of the worker's business and travel expenses suggests an employer-employee relationship. However, this type of arrangement may also exist between a firm or person and an independent contractor.

14) Provisions of Tools

Tools furnished by the worker indicate that the worker is an independent contractor. If the person for whom the services are performed provides the worker with tools, this suggests the existence of an employer-employee relationship.

15) Work Facilities

A worker who invests in and provides work facilities is likely to be an independent contractor, particularly if the facilities are of a type not generally maintained by employees. The lack of investment in facilities indicates dependence on the person for whom the services are performed to provide such facilities, which suggests an employer-employee relationship.

16) Profit Potential and Risk of Loss

Workers who profit from the success of a business and bear the risk of loss from failure are more likely to be independent contractors than employees. Employers typically pay employees a fixed amount without regard to profits or losses.

17) Providing Services to Multiple Firms

An employee tends to provide services to a single firm or person. In contrast, an independent contractor frequently provides services to several firms or persons.

18) Right of Discharge

The ability of a firm or person to terminate the worker for any reason and without penalty suggests an employer-employee relationship. The presence of penalties to the firm upon termination without cause may be indicative of a higher degree of worker independence, which is more characteristic of an independent contractor relationship.

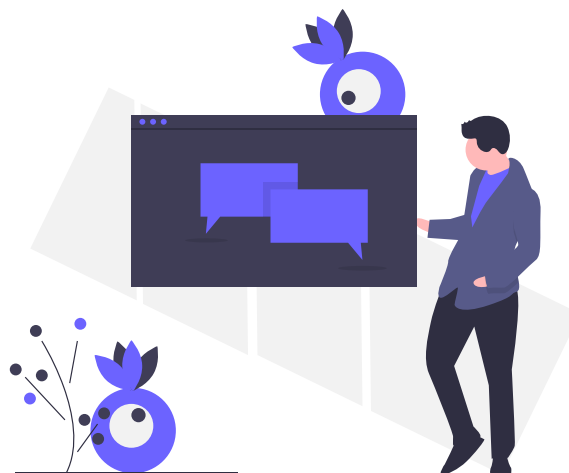
19) Providing Service to the General Public

Workers who regularly and consistently offer their services to the public are more likely to be independent contractors.

20) Worker's Right of Termination

If the worker has the ability to terminate the relationship with the firm or person at any time without penalty, this indicates an employer-employee relationship.

If you still have questions, please contact us – we're here to help.



Employee vs. Contractor Checklist

IRS 20-Factor Test		Yes	No
1. Instruction	Is the worker required to comply with employer's instructions about when, where, and how to work?		
2. Training	Is training required? Does the worker receive training from or at the direction of the employer, includes attending meetings and working with experienced employees?		
3. Integration	Are the worker's services integrated with activities of the company? Does the success of the employer's business significantly depend upon the performance of services that the worker provides?		
4. Services rendered personally	Is the worker required to perform the work personally?		
5. Authority to hire, supervise, pay	Supervise and pay assistants for the employer?		
6. Continuing Relationship	Does the worker have a continuing relationship with the employer?		
7. Set Hours of Work	Is the worker required to follow set hours of work?		
8. Full-time Work Required	Does the worker work full-time for the employer?		
9. Place of Work	Does the worker perform work on the employer's premises and use the company's office equipment?		
10. Sequence of Work	Does the worker perform work in a sequence set by the employer? Does the worker follow a set schedule?		
11. Reporting Obligations	Does the worker submit regular written or oral reports to the employer?		
12. Method of Payment	How does the worker receive payments? Are there payments of regular amounts at set intervals?		
13. Payment of Business/Travel Expenses	Does the worker receive payment for business and travel expenses?		
14. Furnishing of Tools and Materials	Does the worker rely on the employer for tools and materials?		
15. Investment	Has the worker made an investment in the facilities or equipment used to perform services?		
16. Risk of Loss	Is the payment made to the worker on a fixed basis regardless of profitability or loss?		
17. Working for more than one company	Does the worker only work for one employer at a time?		
18. Availability of services to general public	Are the services offered to the employer unavailable to the general public?		
19. Right to discharge	Can the worker be fired by the employer?		
20. Right to quit	Can the worker quit work at any time without liability?		