



Eichenbaum  
Bateman • Larkin  
Certified Public Accountants, LLC

## Who is an Independent Contractor?

The relationship of employer and employee exists when the business for whom the services are performed have the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. Independent contractors determine for themselves how the work is to be performed.

As an aid to determining whether an individual is an employee under the common law rules, twenty factors have been identified by the Internal Revenue Service to help evaluate the extent of direction and control present in any situation. The importance of each factor may vary depending on the situation. The greater the degree of control that exists based on these factors, the more likely it is that the individual will be an employee.

1. **Instructions.** Is the individual required to comply with instructions about when, where, and how work is to be performed? This suggests employee status.
2. **Training.** Individuals who are trained to perform a job in a particular method or manner are usually considered employees. An independent contractor usually uses his own methods and doesn't receive training from the business.
3. **Integration.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control.
4. **Personal services.** If the business requires that the services are performed in person and the employer is interested in the methods used to accomplish the work as well as the results, this suggests control over an employee.
5. **Hiring, supervising, and paying assistants.** If the business hires, supervises, and pays assistants, these factors generally show control over the workers on the job. Conversely, an independent contractor hires, directs, and pays for his own assistants; supplies materials; and works under a contract providing that the worker is responsible only to achieve certain results.
6. **Continuing relationship.** A continuing relationship between the work and business indicates that an employer-employee relationship exists.
7. **Set hours of work.** The establishment of set hours of work by the business indicates control.
8. **Full time required.** This suggests employee status because the employer controls the time of work and restricts the worker from taking other jobs.
9. **Working on employer's premises.** If the worker performs services "off-site", this may suggest independent contractor status. Of course, many properly classified independent contractors will work on the employer's premises.
10. **Work flow.** Routines, schedules, and patterns established by the employer for a worker indicate employee status.
11. **Reports.** A requirement that regular reports, oral or written, be submitted indicates employee status.

12. **Manner of payment.** Being paid by the hour, week or month suggest being an employee, while being paid an agreed upon lump sum for a job suggests being an independent contractor. In addition to lump sum payments, employers may also utilize a straight commission basis of compensation without necessarily affecting the work's status as an independent contractor.
13. **Payment of expenses.** If an employer pays expenses, this usually means he has the right to regulate and direct business activities and indicates employee status.
14. **Providing tools and equipment.** Independent contractors usually provide their own equipment while employees use those belonging to the employer.
15. **Investment.** If the worker has significant investment in his own work facilities, this implies being an independent contractor.
16. **Profit or loss.** Independent contractors can realize a profit or incur a loss. The risk of loss may be a result of investments in equipment or due to a liability for other expenses.
17. **Multiple clients.** Working for multiple clients usually indicates independent contractor status.
18. **Making service available to the general public.** The fact that a worker makes his services available to the general public on a regular basis indicates independent contractor status.
19. **Right to discharge.** If the employer can discharge the worker at any given time, this suggests employment. An independent contractor cannot be dismissed (without legal liability) unless the contract specifications are not met.
20. **Right to terminate.** An independent contractor may be liable for failure to perform according to contractual terms, while an employee may quit at any time without liability.

These twenty factors are designed only as guides for determining whether an individual is an employee. If you need assistance in determining employee or independent contractor status, please do not hesitate to give us a call.