

Employee or Independent Contractor?

It's Not Always Easy to Know the Difference

The IRS devised a series of tests and guidelines to help measure and compare whether your worker is an employee or independent contractor.

Common Law Employees

A basic means of determining whether a worker is an employee is to apply the standard of: Every worker who performs services subject to the will and control of the employer, both as to the methods and results of the work (what is to be done and how it is to be done), is an employee. Although a simple test, it is vague and needs an instrument of measurement for clarification.

Independent Contractors

Independent contractors are those who practice an independent profession, trade or business in which they offer their services to the general public. An individual is treated as an independent contractor if the business that pays for the services only has the right to control or direct the final result of the work and not the means of accomplishing that result.

24 Factor Test

In order to aid employees in determining whether a worker is an employee beyond the Common Law Test, the IRS has established 24 Factors to consult for further clarification. The following chart is a comparison of the 24 factors based on employee attributes contrasted against those of an independent contractor.

Employee	Independent Contractor
Must comply with employer's instructions about when, where and how to work	Determines place and sequence of work
Trained by employer	Train on their own
Services are part of business operations	Services may not be related to employer's services
Work done personally	Others can do work if the contract is completed
Has assistants hired by employer	Employs own assistants
Has continuous relationship with employer	Works by the job
Work hours set by employer	Sets own hours
Works full-time for one employer	Services offered to the public
Work done on employer's premises or designated site	Generally works off-site
Must follow set order of work	Can set own schedule
Submits regular reports	Files report when job ends; interim reports possible
Paid by the hour or salary	Paid by the job
Business and travel expenses paid by employer	Pays own business and travel expenses; part of cost of job
Tools and equipment paid by employer	Furnishes own tools and equipment
Has no investment in facilities used	Has significant investment in facilities used
No profit or loss incurred	Can make a profit or suffer a loss
Works for one firm at a time	Works for several companies at one time
Services are not generally available	Makes services available to general public
Can be fired at any time	Cannot be fired if results satisfy contract
Can quit at any time without liability	Must complete job according to contract specifications
The firm has filed a W-2 for the worker in the past	Never considered an employee
The employer's and individual's intent	A contract for the work to be completed

monthly)		
An unincorporated worker		An incorporated worker

