

# Employee vs. Independent Contractor

According to the IRS, in determining whether an individual is an employee or an independent contractor, questions must be asked in the following three categories: (1) behavioral control, (2) financial control, (3) and the type of relationship of the parties.

1. **Instruction**: Will you instruct the individual (or have the right to instruct) on when, where, and how the work will be done?

*An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.*

2. **Training**: Will you train or provide training to the individual on performing services in a particular manner?

*An employee is trained to perform services in a particular manner. Independent Contractors ordinarily use their own methods and receive no training from the purchaser of their services.*

3. **Integration**: Are the services this individual will be providing a part of the business operations?

*An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.*

4. **Service rendered personally**: Will the individual be personally performing the services?

*An employee renders services personally. This shows that the employer is interested in the methods as well as the results. An Independent Contractor is hired to provide a service and often the employer does not care who performs the job.*

5. **Hiring assistant**: Will you be hiring, supervising, and paying others to assist the individual?

*An employee works for an employer who hires, supervises and pays assistants. An Independent Contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor, and to be responsible only for the result.*

6. **Continuing relationship**: Will this be an ongoing relationship?

*An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.*

7. **Set hours of work**: Will you be setting the individual's hours of work?

*An employee has set hours of work established by an employer. An Independent Contractor is the master of his/her own time.*

8. **Full-time work**: Will the individual be working only for you?

*An employee normally works full time for an employer. An Independent Contractor can work when and for whom he/she chooses.*

9. **Work done on premises**: Will the individual work on the premises or at a location you designate?

*An employee works on the premises of an employer, or works on a route or at a location designated by an employer.*

10. **Order or sequence set**: Will you define the order or sequencing of the work?

*An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.*

11. **Oral or written reports**: Will the individual be asked or required to submit a report to you describing his/her actions?

*An employee submits reports to an employer. This shows that the employee must account to the employer for his/her actions.*

12. **Payments**: Will you be paying the individual by the hour, week or month?

*An employee is paid by the hour, week or month. An Independent Contractor is paid by the job or on a straight commission.*

13. **Expenses**: Will you be paying any expenses for the individual?

*An employee's business and travel expenses are paid by an employer. This shows the employee is subject to regulation and control.*

14. **Tools and materials**: Will you be furnishing the individual with tools, materials, equipment, etc?

*An employee is furnished significant tools, materials, and other equipment by an employer.*

15. **Investment:** Will the individual have any investment in the facilities he/she will be using?

*An Independent Contractor has a significant investment in the facilities he/she uses in performing services for someone else.*

16. **Profit and loss:** Can the person performing the services realize either a profit or a loss?

*Independent Contractors can earn a profit or suffer a loss because they: hire, direct, and pay assistants; have own office, equipment, materials, or facilities; have continuing or reoccurring liabilities; have agreed to perform specific jobs for agreed upon prices; their performance affects their business reputation.*

17. **Works for more than one person or firm:** Can the person providing services work for a number of firms at the same time?

*An Independent Contractor is free to provide services to multiple unrelated clients at the same time.*

18. **Offers services to general public:** Does the individual offer his/her services to the general public?

*An Independent Contractor makes his/her services available to the general public. "Making services available" may include holding a business license, or having advertising and telephone directory listings.*

19. **Right to fire:** Have you given up your right to fire the individual?

*An employee can be fired by an employer. An Independent Contractor cannot be fired so long as he/she produces a result that meets the specifications of the contract.*

20. **Right to quit:** If the individual quits, will he/she incur a liability for work not completed?

*An employee can quit his/her job at any time without incurring liability. An Independent Contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.*