



*Putting the human back into human resources*

## IRS 20 Factor Test – Independent Contractor or Employee?

The 20 factors used to evaluate right to control and the validity of an independent contractor classification include:

- **Level of instruction.** If the company directs when, where, and how work is done, this control indicates a possible employment relationship.
- **Amount of training.** Requesting workers to undergo company-provided training suggests an employment relationship since the company is directing the methods by which work is accomplished.
- **Degree of business integration.** Workers whose services are integrated into business operations or significantly affect business success are likely to be considered employees.
- **Extent of personal services.** Companies that insist on a particular person performing the work assert a degree of control that suggests an employment relationship. In contrast, independent contractors typically are free to assign work to anyone.
- **Control of assistants.** If a company hires, supervises, and pays a worker's assistants, this control indicates a possible employment relationship. If the worker retains control over hiring, supervising, and paying helpers, this arrangement suggests an independent contractor relationship.
- **Continuity of relationship.** A continuous relationship between a company and a worker indicates a possible employment relationship. However, an independent contractor arrangement can involve an ongoing relationship for multiple, sequential projects.
- **Flexibility of schedule.** People whose hours or days of work are dictated by a company are apt to qualify as its employees.
- **Demands for full-time work.** Full-time work gives a company control over most of a person's time, which supports a finding of an employment relationship.
- **Need for on-site services.** Requiring someone to work on company premises, particularly if the work can be performed elsewhere, indicates a possible employment relationship.
- **Sequence of work.** If a company requires work to be performed in specific order or sequence, this control suggests an employment relationship.
- **Requirements for reports.** If a worker regularly must provide written or oral reports on the status of a project, this arrangement indicates a possible employment relationship.

- **Method of payment.** Hourly, weekly, or monthly pay schedules are characteristic of employment relationships, unless the payments simply are a convenient way of distributing a lump-sum fee. Payment on commission or project completion is more characteristic of independent contractor relationships.

- **Payment of business or travel expenses.** Independent contractors typically bear the cost of travel or business expenses, and most contractors set their fees high enough to cover these costs. Direct reimbursement of travel and other business costs by a company suggests an employment relationship.

- **Provision of tools and materials.** Workers who perform most of their work using company-provided equipment, tools, and materials are more likely to be considered employees. Work largely done using independently obtained supplies or tools supports an independent contractor finding.

- **Investment in facilities.** Independent contractors typically invest in and maintain their own work facilities. In contrast, most employees rely on their employer to provide work facilities.

- **Realization of profit or loss.** Workers who receive predetermined earnings and have little chance to realize significant profit or loss through their work generally are employees.

- **Work for multiple companies.** People who simultaneously provide services for several unrelated companies are likely to qualify as independent contractors.

**Availability to public.** If a worker regularly makes services available to the general public, this supports an independent contractor determination.

**Control over discharge.** A company's unilateral right to discharge a worker suggests an employment relationship. In contrast, a company's ability to terminate independent contractor relationships generally depends on contract terms.

- **Right of termination.** Most employees unilaterally can terminate their work for a company without liability. Independent contractors cannot terminate services without liability, except as allowed under their contracts.

## INDEPENDENT CONTRACTOR TEST

### (IRS TWENTY CLASSIFICATION FACTORS)

Determining the correct tax status of any worker is important, though not easy. The IRS has produced the following 20 guidelines to help businesses determine the status of their workers. Because there is no explicit statute or standard for determining a worker's status under the current federal employment tax laws, the test the employer should use is whether the employer has the right to "direct and control the detail and means of a worker's duties."

Some of the classifications are less important than they used to be. In fact, a temporary working relationship should carry little weight in making an employment status determination. Although an independent contractor often has a temporary relationship with a business, seasonal or project employees do as well, and they are considered employees. Remember, "the right to direct and control" is the key phrase. Positive answers to the following questions indicate employee status; negative answers indicate independent contractor status.

	Yes	No
1. Must the worker comply with the employer's instructions about when, where, and how to do the job?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the worker receive training from or at the direction of the employer?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the worker's investment in the facilities insignificant?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the worker receive reimbursements for business and/or traveling expenses?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the worker service only one business?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the worker receive payment by the hour, week, or month?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is the worker isolated from profit and/or loss from his/her services?	<input type="checkbox"/>	<input type="checkbox"/>
8. Can the employer terminate the worker?	<input type="checkbox"/>	<input type="checkbox"/>
9. May the worker quit work at any time without incurring liability?	<input type="checkbox"/>	<input type="checkbox"/>
10. Does the worker have a continuing working relationship with the employer?	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the worker provide services that are integrated into the business and/or that are significant to the business?	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the worker provide services that can only be rendered by the worker personally?	<input type="checkbox"/>	<input type="checkbox"/>
13. Does either the worker or the employer hire and/or supervise assistants to support the worker (paid for by the employer)?	<input type="checkbox"/>	<input type="checkbox"/>
14. Is the worker required to do the work in a sequence set by the employer?	<input type="checkbox"/>	<input type="checkbox"/>
15. Is the worker required to submit regular oral or written reports to the employer?	<input type="checkbox"/>	<input type="checkbox"/>
16. Does the worker rely on the employer to furnish supplies, tools, and materials?	<input type="checkbox"/>	<input type="checkbox"/>
17. Does the worker perform for only one employer at a time?	<input type="checkbox"/>	<input type="checkbox"/>
18. Is the worker required to work a set number of hours?	<input type="checkbox"/>	<input type="checkbox"/>
19. Does the worker work 40 hours or more per week for the employer?	<input type="checkbox"/>	<input type="checkbox"/>
20. Does the worker perform services on the employer's premises, on a route, or at a location designated by the employer?	<input type="checkbox"/>	<input type="checkbox"/>

If your answer is yes to any of these questions, then the person is properly classified as an employee.