

Hiring Independent Contractors

Mistakenly classifying an employee as an independent contractor can cost an employer substantial fines and penalties. The following 20 factors are used by the IRS to determine whether you have enough control over a worker to be considered an employer. When hiring an independent contractor, you should only be concerned with the results of the work, not the way in which it is performed.

These factors are only guidelines, and are considered on a case by case basis. However, if you answer “yes” to all of the first four questions, you are probably dealing with an independent contractor; “yes” to any of questions five through twenty means your worker is probably an employee.

- 1. Profit or loss**
Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from the project? (this should involve real economic risk - not just the risk of not getting paid.)
- 2. Investment**
Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)
- 3. Works for more than one firm**
Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but isn't conclusive since employees can also work for more than one employer.)
- 4. Services offered to the general public**
Does the worker offer services to the general public?
- 5. Instructions**
Do you have the right to give the worker instructions about what, where and how to work? (This shows control over the worker.)
- 6. Training**
Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)
- 7. Integration**
Are the worker's services so important to your business that they have become a necessary part of the business? (This may show that the worker is under your control.)
- 8. Services rendered personally**
Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, not just the results.)
- 9. Hiring assistants**
Do you hire, supervise and pay the worker's assistants? (Independent contractors hire and pay their own staff.)
- 10. Continuing relationships**
Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)

11. **Work hours**
Do you set the worker's hours? (Independent contractors are masters of their own time.)
12. **Full-time work**
Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)
13. **Work done on premises**
Must the individual work on your premises or do you control the route or location where the work must be performed? (Answering no doesn't by itself mean independent contractor status.)
14. **Sequence**
Do you have the right to determine the order in which services are performed? (This shows control over the worker.)
15. **Reports**
Must the worker give you reports accounting for his or her actions? (This may show lack of independence.)
16. **Pay schedules**
Do you pay the worker by the hour, week or month? (Independent contractors are generally paid by the job or by commission, although by industry practice, some are paid by the hour.)
17. **Expenses**
Do you pay the worker's business or travel costs? (This tends to show control.)
18. **Tools and materials**
Do you provide the worker with equipment, tools or materials? (Independent contractors generally supply the materials for the job, and use their own tools and equipment.)
19. **Right to fire**
Can you fire the worker? (An independent contractor can't be fired without subjecting you the risk of a breach of contract lawsuit.)
20. **Worker's right to quit**
Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)