



20 FACTORS USED BY THE IRS TO DETERMINE EMPLOYMENT STATUS

The traditional tests to determine whether a worker is an employee or independent contractor involve the concept of control: Are the services of the worker subject to the taxpayer's will and control over what must be done and how it must be done? In Revenue Ruling 87-41, 1987-1 CB 296, the IRS developed 20 factors used to determine whether a worker is an independent contractor under the common law. Remember: the burden of proof is on the taxpayer; therefore, in general, at least 11 of these factors must show independent contractor status under the common law tests.

For the following questions, a "yes" answer suggests that the worker is probably considered by the IRS to be an employee.

1. Does the principal provide instructions to the worker about when, where, and how he or she is to perform the work? An employee is required to 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. Does the principal provide training to the worker? An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
3. Are the services provided by the worker integrated into the principal's business operations? The employee's services are integrated into the business operations because the services are important to the success or continuation of the business.
4. Must the services be rendered personally by the worker? An employee renders services personally. This indicates that the employer controls the methods as well as the results.
5. Does the principal hire, supervise and pay assistants to the worker? An employee works for an employer that hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible for the result.
6. Is there a continuing relationship between the principal and the worker? 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. Does the principal set the work hours and schedule? An employee has set hours to work. The independent contractor is the master of his or her own time.
8. Does the worker devote substantially full time to the business of the principal? An employee normally works full-time for the employer. An independent contractor can work for whom he or she chooses.

ARCHDIOCESE OF SEATTLE

Office of Human Resources

710 9th Avenue Seattle, Washington 98104-2017

Tel. 206-382-4570 Toll free 800-261-4749 Fax 206-382-4267

HR@seattlearch.org



9. Is the work performed on the principal's premises? An employee works on the premises of an employer, or works on a route, or at a location designated by an employer.
10. Is the worker required to perform the services in an order or sequence set by the principal? 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. Is the worker required to submit oral or written reports to the principal? An employee must submit reports to an employer. This shows that the employee must account to the employer for his or her actions.
12. Is the worker paid 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 straight commission.
13. Does the principal have the right to discharge the worker at will? An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of their contract.
14. Can the worker terminate his or her relationship with the principal any time he or she wishes without incurring liability to the principal? An employee can quit his or 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 the job.
15. Does the principal pay the business or traveling expenses of the worker? An employee's business and travel expenses are paid by the employer. This shows that the employee is subject to regulation and control.
16. Does the principal furnish significant tools, materials and equipment? An employee is furnished significant tools, materials, and other equipment by an employer.

For the following questions, a "yes" answer suggests that the worker is probably considered by the IRS to be an independent contractor.

17. Does the worker have a significant investment in facilities? An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.
18. Can the worker realize a profit or loss as a result of his or her services? An independent contractor can make a profit or suffer a loss.
19. Does the worker provide services for more than one firm at a time? An independent contractor gives his or her services to a multiple of unrelated persons or firms at the same time.
20. Does the worker make his or her services available to the general public? An independent contractor makes his or her services available to the general public.