

GENESEO

Guide to Determining
Independent Contractor Status

DEFINITION:

Employee: An employee is an individual who performs services that are subject to the will and control of an employer—what must be done and how it must be done.

Independent Contractor: An independent contractor is an individual over whom the employer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

IRS has established a list of 20 common law factors to assist in determining if the service provider is an employee or an independent contractor. These factors, which appear in IRS Revenue Ruling 87-41, are intended as guidelines rather than strict rules. If the proper relationship is unclear after analyzing these factors, the employer-employee relationship should be established.

20-RULE TEST:

1. An employee is required to comply with instructions about when, where, and how to work. The employer's right to instruct, not the exercise of that right, is the key. Instruction may be oral or in written procedures or manuals.

An independent contractor is hired to provide goods or services and is not instructed in great detail about how to provide the goods or services.

2. An employee is usually trained by one of the institution's experienced employees. Training indicates that the employer wants the services performed in a certain manner.

An independent contractor ordinarily uses his or her own methods, is hired for his or her expertise, and receives no training from the institution that purchases services.

3. An employee's services are usually integrated into business operations, generally showing that direction and control are being exercised. Integration of services into the business operation occurs when the success or continuation of a business depends to an appreciable degree on the performance of services that are difficult to separate from the business operation.

An independent contractor's services can usually stand alone and are not integrated into business operations.

4. An employee is hired to render services personally. If the employer is interested in who does the job as well as in getting the job done, it indicates that the employer is concerned about the methods used as well as the results of services performed.

An independent contractor is hired to provide a service and often the employer does not care who performs that job.

5. An employee has little control over the hiring, supervising, and payment of assistants. Such action by an employer generally shows control over people on the job with whom assistants work.

An independent contractor will hire, supervise, and pay other workers under a contract in which he or she agrees to provide materials and labor and is responsible for the attainment of a given result.

6. An employee normally has a continuing relationship with the person for whom services are performed. Services may be continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.

An independent contractor has a defined relationship that typically ends when the services are completed.

7. An employee has set hours of work established by the employer, indicative of control. Such a condition bars the worker from allocating time to other work, which is a right of an independent contractor.

An independent contractor tends to establish time use as a matter of right.

8. An employee usually devotes full time to the business of the employer. Full time does not necessarily mean an eight-hour day or a five-day week. Its meaning varies depending on the intent of the parties.

An independent contractor is free to work when, for whom, and for as many employers as desired.

9. An employee on the employer's premises implies control, especially if the work could be performed elsewhere. Someone who works in the employer's place of business is at least physically within the employer's direction and supervision. However, performance of work off-site does not, of itself, mean that no right to control exists.

An independent contractor usually does work that can be completed on or off the employer's premises.

10. An employee often must perform services in a prescribed sequence, which shows a level of employer control. Here, too, the right to set the sequence, not the exercise of that right, is the key. An independent contractor normally is free to perform services in any manner that produces desired results.

11. An employee submits or provides regular written or oral reports that indicate employer control.

An independent contractor submits reports as specified by the contract and may provide them in the broadest of terms and with less frequency than an employee would.

12. An employee is usually paid for work by the hour, week, or month. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.

An independent contractor is customarily paid by the job in a lump sum or on a commission basis.

13. An employee is reimbursed or paid by the employer for business and traveling expenses, a factor that indicates control over the worker.

An independent contractor is paid on a job basis and normally has to assume all expenses except those specified by contract.

14. An employee usually is furnished by the employer with any tools and materials needed, which is indicative of employer control over the worker. In some jobs employees customarily use their own hand tools.

An independent contractor supplies the tools and equipment.

15. An employee normally does not have a significant investment in the facilities used in the job.

An independent contractor often has a significant investment in facilities used in performing services. Facilities generally include equipment or premises necessary for the work, but not such items as tools, instruments, and clothing that are provided by employees as a common practice in their trade.

16. An employee usually does not realize a profit or suffer a loss as a result of the service provided.

An independent contractor is in a position to realize a profit or suffer a loss as a result of services provided.

17. An employee tends to work exclusively for one employer.

An independent contractor normally works for more than one employer at the same time.

18. An employee usually does not make services available to the general public.

An independent contractor makes services available to the general public. "Making services available" may include hanging out a shingle, holding a business license, and having advertising and telephone directory listings.

19. An employee is subject to discharge, showing that control is exercised. Limitation of the right to discharge under a collective bargaining agreement does not detract from the existence of an employer-employee relationship.

An independent contractor cannot be fired so long as results produced measure up to contract specifications.

20. An employee has the right to end the employment relationship 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.

NOTE:

No one factor is more indicative of employee status than another. That is, although the existence of high number of criteria will most likely indicate the presence of an employment relationship, a correspondingly lower number may or may not. Therefore, employers must interpret the list in a manner that is most appropriate for the particular organization in question, presumably erring on the side of caution or electing to pursue an IRS ruling when in doubt.

Be careful of the lure of past practice. Even though similar positions or the same position may have been classified as an employee or independent contractor in the past, working arrangements typically change over time. Therefore, be certain to evaluate the current status of the position in light of these factors.