



# CLIENT INFORMATION GUIDE

**Section:** Human Resources

**Topic:** Employee vs. Independent Contractor

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The Internal Revenue Service has established very specific tests to determine whether a person is an employee or an independent contractor. The determining factor is control. If a significant degree of control is maintained by the employer, the worker is viewed as an employee and not an independent contractor.

Unless the factors listed in the test below confirm the worker is not controlled by the employer, the worker is viewed as an employee and the employer is bound by the legal requirements of an employer.

## The IRS 20-Factor Test

The IRS uses the following factors to determine whether workers are employees or independent contractors.

1. **Instructions.** Workers who are required to comply with others' instructions about when, where, and how they are to work are ordinarily employees.
  2. **Training.** Training workers indicates that employers exercise control over the means by which results are accomplished.
  3. **Integration.** When the success or continuation of a business depends on the performance of certain services, the workers performing those services are subject to a certain amount of control by the owners of the businesses.
  4. **Services rendered personally.** If services must be rendered personally, employers control both the means and the results of the work.
  5. **Hiring, supervising and paying assistants.** Control is exercised if employers hire, supervise and pay assistants.
  6. **Continuing relationships.** Continuing relationships between workers and employers indicate that employer-employee relationships exist.
  7. **Set hours of work.** The establishment of set hours of work by employers indicates control.
  8. **Full-time required.** If workers must devote full time to employers' businesses, employers have control over workers' time. Independent contractors are free to work when and for whom they choose.
  9. **Doing work on employers' premises.** Control is indicated if the work is performed on employers' premises.
  10. **Orders or sequences set.** Control is indicated if workers are not free to choose their own patterns of work, but must perform services in the sequences set by the employers.
  11. **Oral or written reports.** Control is indicated if workers must submit regular oral or written reports to employers.
  12. **Payment by hour, week or month.** This points to employer-employee relationships, provided that this method of payment is not just a convenient way of paying a lump sum agreed on as the cost of a job. Independent contractors are usually paid by the job or on straight commission.
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- 13. Payment of business and/or traveling expenses.** Employers paying workers' expenses of this nature shows that employer-employee relations usually exists.
- 14. Furnishing tools and materials.** If employers furnish significant tools, materials, and other equipment, employer-employee relationships usually exist.
- 15. Significant investments.** Workers are independent contractors if they invest in facilities that are not typically maintained by employees (such as an office rented at fair market value from an unrelated party). Employee depend on employers for such facilities.
- 16. Realization of profits or losses.** Workers who can realize profits or losses (in addition to profits or losses ordinarily realized by employees) are independent contractors. Workers who cannot are generally employees.
- 17. Working for more than one firm at a time.** If workers perform services for a number of unrelated persons at the same time, they are usually independent contractors.
- 18. Making services available to the general public.** Workers are usually independent contractors if they make their services available to the general public on a regular and consistent basis.
- 19. Right to discharge.** The right of employers to discharge workers indicates that the workers are employees.
- 20. Right to terminate.** Workers are employees if they have the right to end their relationship with their principals at any time without incurring liability.

Source: Don D. Sessions. "Worker Classification: Employee vs. Independent Contractor." *EEO*. Vol. 28 (July/August 1996).