

FYI - IRS Guidelines for Employee vs. Contractor

Factors in Revenue Ruling 87-41

1. Is the worker subject to the employer's instructions?

A worker who is required to comply with the employer's instructions as to when, where and how work is to be done is most likely an employee. It is only required that an employer have the right to control the worker, whether or not the control is implemented is irrelevant.

2. Does the employer provide training?

Any form of employer-provided training suggests an employee-employer relationship since training implies that the work needs to be performed in a particular manner. The IRS defines training in very broad terms.

3. What is the degree of integration of the services into the business?

If the success of the services performed by the individual is crucial to the success of the business as a whole, control over the services is presumed to exist. The greater the degree of integration of the work into the business, the greater the likelihood that an employer-employee relationship exists.

4. Are the services rendered personally by the worker?

Services required to be performed in person by the worker tend to indicate control, especially when the employer has an interest in how the results are achieved.

5. Who is responsible for hiring, supervising and paying assistants?

Hiring, directing, or paying assistants, when done by the employer, shows an employee-employer arrangement. Independent contractors hire, direct and pay their own people.

6. Does a continuing relationship exist?

Continuing work by the individual, even if not regular, points toward an employer-employee relationship.

7. Does the employer set hours of work?

Designating hours of work demonstrates control over the worker.

8. Is full-time work required?

Utilizing a worker on a full-time basis precludes the worker from pursuing other work and is an indication of control.

9. Is the person doing work on the employer's premises?

Performing work away from the employer's offices reduces the thread of control. While some independent contractors do work on the employer's premises, this tends to indicate greater control by the employer.

10. Is the work order or sequences set by the employer?

Following routines or work patterns established by the employer is indicative of employee status.

11. Are oral or written reports required?

The requiring of regular progress reports demonstrates control.

12. Is payment by the hour, week or month?

Payment on a fixed periodic basis, rather than upon completion of the work, is an indicator of employee status.

13. Does the employer make payment of business and/or traveling expenses?

The payment of these expenses by the employer points to regulation of business activities and thus indicates employee status.

14. Is the employer responsible for the furnishing of tools and materials?

Independent contractors normally provide their own tools and materials.

15. Is the worker required to make a significant investment to perform the work?

The making of a substantial investment by the worker, e.g. rental of a facility, tends to support the existence of independence.

16. Does performance result in realization of profit or loss?

The ability to realize either a profit or a loss in performing the work is a characteristic of an independent contractor.

17. Is the individual working for more than one firm at a time?

The performance of services for several customers simultaneously is typical of an independent contractor.

18. Is the individual engaged in making service available to the general public?

Marketing one's services to the general public indicates independence.

19. Does the employer have a unilateral right to discharge the worker?

The right to discharge at will indicates an employer-employee relationship. Independent contractors typically can only be discharged for failure to meet contract requirements.

20. Does the worker have a unilateral right to terminate his services?

An employee may resign at will, but an independent contractor may be contractually obligated to perform.