

THE TWENTY FACTORS FOR DETERMINING INDEPENDENT CONTRACTOR STATUS

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The Internal Revenue Service essentially relies on twenty “common law” factors to determine whether a person who provides services for a business is an employee or independent contractor. The test is most commonly used to determine whether a business is required to withhold income taxes and payroll taxes, including Social Security, Medicare and unemployment taxes.

The ultimate test is whether the person or entity for whom the work is performed has the “right to control” both the manner in which the work is done and how the results are achieved. The importance of each factor varies depending on the occupation and the factual context in which the services are performed. The twenty factors are as follows:

1. Whether the hiring entity has the right to require that its instructions be followed about when, where and how the work is to be performed, as well as the right to require compliance with those instructions even if it is never exercised.
2. Whether the person who is hired is required to attend or undergo training to do the job.
3. Whether the success or continuation of the business depends to an appreciable degree on the performance of certain services that the hired person provides, such that control by the hiring entity over the performance of those services is necessary.
4. Whether the services performed by the service provider are required to be rendered personally, as opposed to being performed by others who are hired by the person retained to do the work.
5. Whether the hiring entity or service provider hires supervisors and pays the assistants who are used to help perform the work.
6. Whether a continuing relationship between the parties exists, although services may still be performed on a frequent or recurring basis in an independent contractor relationship.
7. Whether there are established hours of work set by the person for whom the services are performed.
8. Whether the service provider has devoted substantially all their time to the business for whom the services are performed, as opposed to having control over the amount of time to be spent working on a given project.
9. Whether the work is performed on the premises of the hiring entity, especially if it can be done elsewhere. If it does not matter where the work is performed, the service provider is more likely to be found an independent contractor if he or she routinely perform the services away from the hiring person's place of business.
10. Whether the service provider must perform services in the order of sequence set by the person for whom the services are performed.

11. Whether the hiring entity has the right to require the submission of regular progress reports.
12. Payment by the hour, week or month is indicative of an employment relationship, whereas payment of a lump sum as the agreed-upon cost of the job is normally made to independent contractors.
13. Which person is responsible for payment of business or traveling expenses, which are more commonly borne by the independent contractor as a cost of doing business.
14. Whether the person performing the work furnishes their own tools, materials or other equipment to do the work.
15. Whether the service provider invests in the facilities that they use in performing services which are not typically maintained by employees (such as a separate business or home office).
16. Whether there is any risk of profit or loss to the service provider.
17. Whether the service provider performs more than minimal services for unrelated persons or firms at the same time.
18. Whether the service provider makes their services available to others on a regular and consistent basis, and advertises their services to the general public.
19. Whether the hiring entity has a right to discharge the service provider at will. Employers routinely exercise control by threat of dismissal, while independent contractors usually cannot be terminated so long as they produce the result that meets the specifications of the contract.
20. Whether the service provider has a right to end the relationship at any time without incurring liability, as employees normally do.

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