

The IRS 20-Factor Test

To determine if someone is an independent contractor or employee, the IRS looks at what degree of control you have over the behavioral, financial and relationship aspects of the work. The more independent the person is, the more they will look like an independent contractor.

Note: See below for the latest update!

Here are the tests the IRS apply:

1. Did you train the person to perform the services for you or did you expect they already had the skills and experience to do the job?
2. Did you give the person instructions on how, when, and where to perform the work or did the person have the authority to decide how, when, and where without your input?
3. Does the individual bear the risk of losing money on the deal?
4. Does the person work only for you or do they provide services to more than one company?
5. Do you pay the person's business expenses or are the business expenses associated with performing the work part of a contract price negotiated by you and that person? If travel expenses are extra, are they outlined in the contract?
6. Does the person provide services on an on-going basis?
7. Do you pay the person by hour or by month, or are they paid according to the terms of the contract, with no additional compensation for overtime hours worked?
8. Are the services provided essential to the running of the company?
9. Do you establish work hours or does the person set their own hours?
10. Does the person work full-time for you?
11. Do you provide the tools, equipment and supplies to do the job or is the person responsible for supplying their own?
12. Does the person work out of your facility or out of their own home or office?
13. Have you purchased tools, equipment or supplies for the worker or are these expenses born by them as part of the contract price?

14. Does the worker need to provide reports back to your company or do they work independently, responsible only for the end result?
15. Is the worker prohibited from delegating work to others or do they have the authority to decide how tasks will be accomplished?
16. Can the worker hire assistants if they wish?
17. Does the worker provide services exclusively for your company?
18. Can the worker terminate the relationship with your company without penalty or is there a contract that needs to be followed?
19. Can your company fire the person at will or is there a contract that needs to be followed?
20. Do you control the way in which the work is done or does the worker have control over this?

Latest Update!

The DOL & IRS are applying a test of financial dependency now. The IRS is convinced that 80% of workers are actually employees.

Employers should use the following Economic Realities Test to see if they have employees or independent contractors.

1. Is the work an integral part of the Employer's business?
2. Does the worker's managerial skill affect his or her opportunity for profit or loss? E.g. does the person do their own scheduling, find their own work?
3. How do the worker's and the employer's relative investment compare? E.g. who supplies the equipment?
4. Does the work performed require special skill and initiative? E.g. does the person write their own contracts?
5. Is the relationship between the worker and the employer permanent or indefinite? E.g. does the person work for more than one employer and can she turn down assignments?
6. What is the nature and degree of the employer's control? E.g. can she turn down work?