

Worker's Status: "Employee" vs. "Independent Contractor"

The following factors can help you determine whether a worker is an "employee" or an "independent contractor" for your company.

General Indications of "Independent Contractor" Status

- **Tax forms.** An independent contractor receives a 1099 and not a W-2.
- **Independence.** An independent contractor generally controls when, where, and how they perform their work on behalf of the company.
- **Control of assistants.** An independent contractor hires, supervises, and pays their assistants.
- **Relationship with a company.** An independent contractor can arrange an ongoing relationship with a company involving multiple, sequential projects.
- **Flexibility of scheduling.** An independent contractor determines the hours and days they are available to work. Additionally, an independent contractor controls how they divide their work time.
- **Method of payment.** Payment on commission or project completion indicates the worker is an independent contractor.
- **Business or travel expenses.** An independent contractor usually covers the costs their business and travel expenses and includes these costs in their fees.
- **Ownership of tools and materials.** An independent contractor generally purchases and uses their own supplies and tools to complete their work.
- **Investment in facilities.** Independent contractors typically invest in and maintain their own place of work.
- **Training.** An independent contractor incurs the costs of training and certification for themselves and determines if and when they participate in training.
- **Not obligated to a single company.** An independent contractor may simultaneously provide services for several, unrelated companies.
- **Availability to public.** An independent contractor's services are regularly available for hire.
- **Assignment of work.** An independent contractor can assign work to anyone under their supervision.
- **Contractual obligation.** A company's ability to terminate an independent contractor depends on contract terms.
- **Termination of services.** Independent contractors cannot terminate services without liability, except as allowed under their contracts.

General Indications of “Employee” Status

- **Tax forms.** An employee receives a W-2 and not a 1099.
- **Level of instruction.** The company directs when, where, and how work is done by the employee.
- **Amount of training.** A company can request an employee participates in company-provided training regarding the methods by which work is to be accomplished. Additionally, a company may pay for continued education or certification required for the employee to continue working in the capacity the employer desires.
- **Degree of business integration.** An employee’s services are integrated into business operations or significantly affect business success.
- **Extent of personal services.** The company designates work to employees.
- **Control of assistants.** The company, not the employee, hires, supervises and pays the employee's assistants.
- **Continuity of relationship.** A continuous relationship between a company and their employee indicates a relationship of employment.
- **Scheduling.** A company dictates hours and days of work to its employees.
- **Demands for full-time work.** Full-time work gives a company control over most of an employee's time, which indicates employment and not a contractual relationship.
- **Need for on-site services.** The company requires an employee to work on company premises—even if the work can be performed elsewhere.
- **Sequence of work.** The company requires work be performed in a specific order.
- **Requirements for reports.** An employee regularly communicates the status of a project and/or work performed.
- **Method of payment.** An employee has an hourly, weekly, or monthly pay schedule, which isn’t simply a convenient way of distributing a lump-sum fee.
- **Payment of business or travel expenses.** The company directly reimburses an employee for travel and other business-related costs.
- **Provision of tools and materials.** An employee performs most of their work using company-provided equipment, tools and materials.
- **No investment in facilities.** The company provides the employee’s work facilities.
- **No realization of profit or loss.** Employees receive predetermined earnings and generally don’t realize significant profit or loss through work.

- **Work for one company.** An employee works for a single company at a time.
- **Not available to public.** An employee's services are not regularly available to the general public.
- **No control over discharge.** The company has the unilateral right to discharge an employee.
- **Right of termination.** An employee can unilaterally terminate their work for a company without liability.