

Independent Contract Status

The law treats employees and independent contractors differently. For example, independent contractors are often exempt from labor and employment legislation, while employees are usually covered. Therefore, failure to properly classify independent contractors can lead to unemployment tax liability, insurance or benefits suits, wage and hour claims, and much more. Some common law factors used to determine independent contractor status include the extent of employer control, nature of the service, and independence of the individual's trade.

Most courts and government agencies use some variation of the common law test. The IRS, for example, employs a set of separate factors than those used by the courts to determine independent contractor status.

Other agencies, such as state unemployment agencies, use some variation of the sample A-B-C Test to determine independent contractor status. It is important to remember that this is a sample test and that the law in each jurisdiction and for each agency may differ somewhat. This sample does, however, provide a good example of a typical test. Please note that in this example all three requirements must be met for an individual to be an independent contractor. Some jurisdictions may not require an employing unit to meet all three factors, while other jurisdictions may have fewer requirements.

Hopefully this summary will help guide you in your use of independent contractors. Obviously the particular facts and circumstances, including the jurisdiction, the agency involved, or legislation in question will determine the outcome of specific cases. You should consult an attorney familiar with labor and employment law in your area about your specific factual situation.

Sample A-B-C Test for Independent Contractor Status

Service performed by an individual for an employing unit, whether or not such individual employs others in connection with the performance of such services, shall be deemed to be employment unless and until it is proven in any proceeding where such issue is involved that:

- A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; AND
- B. Such service is either outside the usual course of the business for which such service is performed OR that such service is performed outside of all the places of business of the enterprise for which such service is performed; AND
- C. Such individual is engaged in an independently established trade, occupation, profession, or business.

20 Factors Used by the Internal Revenue Service for Classifying Workers as Independent Contractors

These are the 20 factors the IRS uses to determine whether a worker should be classified as an independent contractor or an employee.

1. Instructions: If the employing unit gives detailed instructions, particularly regarding how the task is to be accomplished, the worker is more likely to be an employee. If the employing unit only gives instructions as to the final outcome, the worker is more likely to be an independent contractor.
2. Training: If the worker requires additional training from the employing unit, he/she is more likely to be an employee. If the worker requires no additional training, he/she is more likely to be an independent contractor.
3. Integration: The more the services performed by the worker are closely related to the "core" business of the employing unit, the more likely the worker is an employee. The more the services performed by the worker are incidental to "core" business practices, the more likely the worker is an independent contractor.
4. Services rendered personally: If the services must be rendered by the worker personally, he/she is more likely to be an employee. If the worker need not perform the services personally, he/she is more likely to be an independent contractor.
5. Contracting, supervising, and paying assistants: If the employing unit is responsible for contracting, supervising, and paying assistants, the worker is more likely to be an employee. If the

- worker is responsible for contracting, supervising, and paying assistants, he/she is more likely to be an independent contractor.
6. Continuing relationship: The longer the business relationship continues, the more likely the worker is an employee. The shorter the business relationship continues, the more likely the worker is an independent contractor.
 7. Set hours of work: If the worker has set hours of work, he/she is more likely to be an employee. If the worker is able to set his or her own hours, he/she is more likely to be an independent contractor.
 8. Full-time work required: If the worker is required to work full-time, he/she is more likely to be an employee. If the worker is able to set his or her own hours, he/she is more likely to be an independent contractor.
 9. Sequence of work: If the employing unit set the sequence of work to be performed, the worker is more likely to be an employee. If the worker sets the sequence, he/she is more likely to be an independent contractor.
 10. Place of work: If the work must be performed at the place of business, the worker is more likely to be an employee. If the work may be performed elsewhere, the worker is more likely to be an independent contractor.
 11. Reports: If the worker has to make frequent reports on the progress of his or her services, he/she is more likely to be an employee. If the worker does not have to make frequent reports, he/she is more likely to be an independent contractor.
 12. Method of payment: If the worker is paid from company payroll, he/she is more likely to be an employee. If the worker bills the employing unit, he/she is more likely to be an independent contractor.
 13. Payment of business expenses: If the employing unit directly pays for a business expense of the worker, the worker is more likely to be an employee. If the worker pays for business expenses then bills the employing unit, he/she is more likely to be an independent contractor.
 14. Furnishing tools and materials: If the employing unit furnishes tools and materials, the worker is more likely to be an employee. If the worker furnishes his or her own tools and materials, he/she is more likely to be an independent contractor.

15. Investment: If there is little or no personal investment in the tools, materials, and resources used in providing the service, the worker is more likely to be an employee. If the worker has a substantial personal investment, he/she is more likely to be an independent contractor.
16. Risk of loss: If the worker has little risk of loss, he/she is more likely to be an employee. If the worker has a greater risk of loss, he/she is more likely to be an independent contractor.
17. Working for more than one firm at a time: If the worker provides services for only the employing unit, he/she is more likely to be an employee. If the worker serves more than one firm at a time, he/she is more likely to be an independent contractor.
18. Availability of services to the general public: If the worker's services are available only to the employing unit, he/she is more likely to be an employee. If the worker provides services to the general public, he/she is more likely to be an independent contractor.
19. Right to discharge: If the employer has the right to terminate the worker at any time, he/she is more likely to be an employee. If the employer does not have the right to terminate the contract without reasonable notice, the worker is more likely to be an independent contractor.
20. Right to quit: If the worker has the right to quit without notice, he/she is more likely to be an employee. If the worker does not have the right to quit without reasonable notice, he/she is more likely to be an independent contractor.