

Independent contractor vs. employee



The IRS looks at three main categories to determine whether a worker is an employee or an independent contractor.

Behavioral Control

Facts indicating the right to **control** the worker's behavior suggest an employment relationship.

Instructions: If the worker is told when to work, where to work, what tools to use, who to work with, where to purchase supplies, who exactly must do the job, what routine must be followed, or what sequence must be done, an employment relationship is more likely.

Training: Training provided by the business is strong evidence of an employment relationship.

Financial Control

Facts indicating the right to **control** the economic aspects of a worker's activities suggest an employment relationship.

Significant investment: If the worker has a significant investment in equipment and supplies, an independent contractor status is suggested.

Reimbursed expenses: If the business reimburses the worker for expenses, an employment relationship is more likely.

Services available to the relevant market: An independent contractor status is indicated if the worker is able to advertise and promote his or herself to the general public.

Method of payment: Payment based on a unit of time is an indication that an employment relationship may exist.

Opportunity for profit or loss: If a worker is able to either profit or loss from a relationship, he or she is able to control his or her own destiny and an independent contractor relationship most likely exists. The above four factors play a large part in this determination.

Relationship of the Parties

The way parties **perceive** their relationship may indicate whether an employment situation exists.

Intent of the parties – written contracts: The fact that a written contract governs the relationship is indication that an independent contractor status exists only if the contract describes the true substance of the business.

Indefinite relationship: If a relationship is indefinite, an employment situation may be indicated.

Employee benefits: The existence of benefits is evidence of an employment situation.

Regular business activity: If the worker is involved with the business to the extent that his or her work is presented as the business' own work, an employment situation is most likely present.

The IRS uses all of the above factors to make a determination of worker status. The major factor is control.