# Twenty-Factor Test For Identifying Independent Contractors



The following is the test the Internal Revenue Service has used for years in determining whether a worker is an employee or an independent contractor. This test is based on various “common law” (non-statutory) considerations and many courts have used all or some of the listed factors to establish their own “right- to-control” test. Under a new approach to worker classification announced by the IRS in 1996, the 20-factor test is considered an “analytical tool” rather than the sole test to be applied.

1. **Instructions.** An employee is usually required to comply with the employer’s instructions on how, when, and where the work is to be done. An independent contractor is usually given directions as to desired results, but is not supervised as to how the details of the work should be carried out.
2. **Training.** Training of a worker usually indicates an employer-employee relationship, since it indicates that the employer wants the work done in a particular way. Training can include instruction by a more experienced employee and attendance at meetings or seminars. Independent contractors usually decide for themselves how the work is to be done and do not receive training from the hiring firm.
3. **Integration.** If the worker’s services are integrated into the employer’s business operations, the worker is more likely to be under the employer’s control and be classified as an employee.
4. **Services rendered personally.** If the worker must render services personally, he or she is probably an employee, since the employer is interested in both the means and the results of the work. An independent contractor generally is free to hire others to actually do the work.
5. **Hiring, supervising, and paying assistants**. If the business hires, supervises, and pays for assistants to help a worker do a job, the worker is usually an employee. If the worker hires, supervises, and pays for assistants to help perform the services, independent contractor status is indicated.
6. **Continuing relationship.** A long-term continuing work relationship, even if it recurs at irregular intervals, tends to indicate an employer-employee relationship. Isolated in-stances of hiring a worker to work on a particular project tend to indicate independent contractor status.
7. **Set hours of work.** If the hiring business establishes set hours of work, this indicates control and the worker is more likely to be considered an employee. Independent contractors generally set their own work hours.
8. **Full-time work required.** If the worker must devote full time to the hiring business, the worker is implicitly restricted from taking other jobs, so

employee status is indicated. An independent contractor is free to choose when and for whom he or she works. Independent contractors may also work for several people at the same time.

9. **Working on employer's premises.** Requiring that the work be done on the employer's premises is an indication of control and employee status, especially if the work could be done somewhere else.
10. **Required order or sequence of work.** Requiring a worker to perform the work in a set order or sequence indicates employee status.
11. **Oral or written reports.** A requirement that a worker must submit regular oral or written reports indicates that the worker is an employee. Independent contractors are more likely to report only on major developments in the progress of the work.
12. **Payment of wages.** Payment of wages by the hour, week, or month indicates an employeremployee relationship. An independent contractor is usually paid by the job or on a commission basis.
13. **Payment of business and travel expenses**. Payment of a worker's business and travel expenses indicates employee status. Independent contractors are usually responsible for paying their own expenses.
14. **Furnishing tools and materials.** If the business furnishes a worker with significant tools, materials, or equipment for doing the job, an employer-employee relationship is indicated. An independent contractor generally provides the tools and materials necessary to perform the work.
15. **Significant investment.** If the worker makes a significant investment in the facilities used in doing the work, independent contractor status is indicated. If the business furnishes all necessary facilities, employee status is indicated.
16. **Realization of profit or loss.** If a worker can realize a profit or suffer a loss as a result of performing the work, independent contractor status is indicated. ;
17. **Working for more than one firm at a time.** If a worker provides services to more than one business during the same " time period," independent contractor status is indicated.
18. **Right to discharge.** The right to discharge a worker indicates an employer-employee relationship. The ending of a relationship with an independent contractor is usually governed by contract.
19. **Making services available to the general public.** If a worker makes his or her services available, independent contractor status is indicated.
20. **Right to terminate.** A worker who can end the work relationship at any time without responsibility to the business for completion of the job is usually an employee. An independent contractor who ends a relationship before the work is complete may be liable for breach of contract.

*As a general rule, no one factor listed in this test will be controlling. However, if more factors indicate employee status than independent contractor status, the worker will probably be viewed as an employee.*