

CHECKLIST

20-FACTOR COMMON LAW TEST FOR CLASSIFYING AN INDIVIDUAL EMPLOYEE OR INDEPENDENT CONTRACTOR

Whether a worker is classified as an employee or an independent contractor hinges on the common law definition of "employment". Making this determination can require a difficult factual analysis in which common law principles, case law, and rulings must be considered. The IRS has provided some guidance by listing 20 factors used in determining independent contractor status. The checklist can be used to assess the applicable factors in your situation:

Employee	Contractor	
_____	_____	1) Instructions: An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.
_____	_____	2) Training: An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their service.
_____	_____	3) Integration: An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
_____	_____	4) Services rendered personally: An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
_____	_____	5) Hiring assistants: A employee works for an employer who hires, supervises, and pays workers. An independent contractor can hire, supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
_____	_____	6) Continuing relationship: An employee generally has a continuing relationship with an employer. A continuing relationship may exist even if the work performed is at recurring although irregular intervals.

Employee

Contractor

7) Set hours of work: An employee usually has set hours of work established by an employer. An independent contractor generally can set his or her own work hours.

8) Full-time required: An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for whom he or she chooses.

9) Work done on premises: An employee usually works on the premises of an employer, or works on a route or at a location designated by the employer.

10) Order or sequence set: An employee may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to discretion and control.

11) Reports: An employee may be required to submit reports to an employer. This shows that the employer maintains a degree of control.

12) Payments: An employee is paid by hour, week, or month. An independent contractor is usually paid by the job or on a straight commission.

13) Expenses: An employee's business and travel expenses are generally paid by the employer. This shows that the employee is subject to regulation and control.

14) Tools and Materials: An employee is normally furnished significant tools, materials, and other equipment by an employer.

15) Investment: An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

16) Profit or loss: An independent contractor can make a profit or suffer a loss.

Employee Contractor

_____ _____ 17) Works for more than one person or firm: An independent contractor is generally free to provide his or her services to two or more unrelated persons on firms at the same time.

_____ _____ 18) Offers services to general public: An independent contractor makes his or her services available to the general public.

_____ _____ 19) Right to fire: An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.

_____ _____ 20.) Right to quit: An employee can quit his or her job at anytime without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

This Department determines that _____ is qualified to be an:

(Contractor Name)

Independent Contractor: _____

Employee _____

Approved by: _____
(Department Head)

Note: Since these tests are subjective, an individual need not meet all or even most of these tests to be classified as an employee since the IRS may give more weight to a certain factor depending on the individual occupation or other facts and circumstances