

# The Great Debate: Employee vs Independent Contractor

## Independent Contractor Determination

Various tests exist for determining employee vs. independent contractor status.

The once common "20 Common Law Factors Test" of the IRS, has been replaced by a new category test.

**This test examines the worker employer relation in three areas:**

**1. Behavioral control** covers the amount of control the employer has over the worker in terms of where, when, and how the job is done, among other factors.

**2. Financial control** dictates how much control the company has over a worker's pay, business expenses, and facility investment. This includes:

- ▶ The extent to which the worker has unreimbursed business expenses,
- ▶ The extent of the worker's investment in the facilities used in performing services,
- ▶ The extent to which the worker makes his or her services available to the relevant market,
- ▶ How the business pays the worker, and
- ▶ The extent to which the worker can realize a profit or incur a loss.

**3. Relationship type** covers facts that show how the parties perceive their relationship.

This includes:

- ▶ Written contracts describing the relationship the parties intended to create,
- ▶ The extent to which the worker is available to perform services for other, similar businesses,
- ▶ Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay,
- ▶ The permanency of the relationship, and
- ▶ The extent to which services performed by the worker are a key aspect for the regular business of the company.

For IRS help with classifying your workers, you can file Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding."

Meeting the IRS test is not the only hurdle to determine independent contractor status.

If you do decide to go the independent contractor route, then develop a specific contractor agreement and make certain the contractor is insured to reduce your potential risks.

Hiring an independent contractor can be the right choice for small companies but it can also provide you an audit risk if you do not handle your paperwork properly.

For more info, please contact:

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