

Common-Law Factors Indicating Employee Status

1. **Instructions.** A worker who must comply with other persons' instructions about when, where and how he or she is to work is ordinarily an employee. This factor is present when the person for whom the services are performed has the right to require compliance.
2. **Training.** Requiring an experienced employee to work with the worker, corresponding with the worker requiring the worker to attend meetings or using other training methods indicates the person for whom the services are performed wants them done in a particular method or manner.
3. **Integration.** Integrating the worker's services into the business operations generally shows that he or she is subject to direction and control. When the success or continuation of a business depends to an appreciable degree on the performance on certain services, the workers who do them must necessarily be subject to certain amount of control by the business owner.
4. **Services rendered personally.** If the worker must render the services personally, presumably the person for whom they are performed is interested in the methods used to accomplish the work as well as in the results.
5. **Hiring, supervising and paying assistants.** If the person for whom the services are performed hires, supervises and pay assistants, that generally shows control over the workers on the job. However, if one worker hires, supervises and pays the other assistants under a contract in which the worker agrees to provide materials and labor and is responsible only for attaining a result, this indicates independent contractor status.
6. **Continuing relationship.** A continuing relationship between the worker and the person for whom the services are performed indicates an employer-employee relationship exists. This may occur when work is performed at frequently recurring although irregular intervals.
7. **Set hours of work.** If the person for whom the services are performed establishes set work hours, this indicates control.
8. **Full-Time required.** If the worker must devote himself or herself substantially full-time to the business of the person for whom the services are performed, the latter has control over the amount of time the worker spends working and implicitly restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.
9. **Doing work on employer's premises.** If the individual performs the work on the premises of the person for whom the services are performed, this suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises, such as at the worker's office, indicates some freedom from control. However, this fact by itself does not mean the worker is not an employee. The importance of this factor

depends on the nature of the services involved and the extent to which an employer generally would require that employees perform such services on the premises. Control over the place of work is indicated when the person for whom the services are performed has the right to compel the worker to travel a designated route, to canvas a territory within a certain time frame or work at specific places.

- 10. Order or sequence set.** If a worker must perform services in the order or sequence set by the person for whom the services are performed, that factor shows the worker is not free to follow his or her own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set it infrequently. Retaining the right to do so is sufficient to show control.
- 11. Oral or written reports.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a certain degree of control.
- 12. Payment by hour, week or month.** Payment by one of these three methods generally points to an employer-employee relationship, provided this method is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission basis generally indicates the worker is an independent contractor.
- 13. Payment of business or travel expenses.** If the person for whom the services are performed generally pays the worker's business and travel expenses, he or she is ordinarily an employee. To control expenses, an employer usually retains the right to regulate and direct the worker's business activities.
- 14. Tools and materials.** The fact the person for whom the services are performed furnishes significant tools, materials and other equipment tends to show the existence of an employer-employee relationship.
- 15. Significant investment.** If the worker invests in facilities not typically maintained by employee (such as an office rented at fair value from an unrelated party) and uses them to perform services, that tends to indicate the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person for whom the services are performed for such facilities. Accordingly, an employer-employee relationship exists.
- 16. Realization of profit or loss.** A worker who can realize a profit or suffer a loss as a result of his or her services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor. The worker who cannot is an employee. For example, if a worker is subject to a real risk of economic loss due to a significant investment or a bona fide liability for expenses, such as salary payments to unrelated employees, that indicates the worker is an independent contractor. The risk a worker will not receive payment for his or her services, however, is common to both

independent contractors and employees and thus is not sufficient to support independent contractor treatment.

- 17. Working for more than one entity.** If a worker performs more than de minimis services for multiple unrelated persons or companies at the same time, that factor generally indicates the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each, especially where the two are connected.
- 18. Making service available to the general public.** The fact a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
- 19. Right to discharge.** The right to fire a worker is a factor indicating the worker is an employee and the person with the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as he or she produces a result that meets the agreed contract specifications.
- 20. Right to terminate.** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time without incurring liability, this indicates an employer-employee relationship.