

Whether a worker is classified as an employee or an independent contractor hinges on the common law definition of "employment." This can represent 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 for determining independent contractor status. Total up the applicable factors in your situation. The more of these factors that are favorable to establishing independent contractor status, the stronger the argument will be that no employee-employer relationship exists. Another factor not included above but which is indicative of employee status is the providing of health and other fringe benefits and sick leave or vacation pay.

	Employee	Contractor
1. Instructions - a worker who is required to comply with another persons' instructions about when, where and how he or she is to work ordinarily is an employee.	_____	_____
2. Training - requiring a worker to attend meetings, work with a more experienced worker or otherwise perform in a particular manner or method indicates employee status.	_____	_____
3. Integration - the degree to which a business depends on the worker's services tends to indicate employee status.	_____	_____
4. Services rendered personally - if services must be rendered personally, employee status is indicated.	_____	_____
5. Hiring, supervising and paying assistants - if services can be delegated or subcontracted at the worker's election, with that worker paying for such help, then contractor status is indicated.	_____	_____
6. Continuing relationship - a continuing relationship, even one which is recurring at irregular intervals, indicates employee status.	_____	_____
7. Set hours of work - the establishment of set hours of work by the person for whom the work is performed shows control (i.e. , employee status).	_____	_____
8. Full time required - if a worker is required to devote substantially full time to the business and there is an implicit or explicit restriction from doing other gainful work, employee status is indicated.	_____	_____

	Employee	Contractor
9. Doing: work on employer's premises - if work is performed on the premises of the person for whom the services are performed, this suggests control over the worker, especially if such work could be performed elsewhere.	_____	_____
10. Order or sequence set - if the worker must perform services in the order set by the person for whom the services are performed, this indicates employee status.	_____	_____
11. Oral or written Reports --a requirement that the worker submits regular reports to the person for whom services are performed indicates employee status.	_____	_____
12. Payment method - an employee usually is paid by the hour, week or month, while the contractor is paid by the job.	_____	_____
13. Payment of business expenses - the payment of the worker's business and traveling expenses indicates employee status.	_____	_____
14. Furnishing tools and materials - the furnishing of significant tools, materials or other equipment by the user indicates employee status.	_____	_____
15. Significant investment - the lack of investment in facilities indicates dependence on the person for whom services are performed (i.e. , employee status).	_____	_____
16. Realization of profit and loss - a worker who can realize profit or suffer a loss as a result of his or her services generally is a contractor; a worker who cannot is an employee.	_____	_____
17. Working for more than one firm at a time - if a worker performs more than de minimis services for a number of persons at the same time, this indicates contractor status.	_____	_____
18. Making service available to the general public - a contractor generally makes his or her services available to the general public.	_____	_____
19. Right to discharge - the right to discharge a worker indicates employee status; an independent contractor's termination depends upon contractual terms.	_____	_____
20. Right to terminate - if a worker has the right to end his or her relationship at any time, this indicates employee status; an independent contractor is contractually bound to complete an assignment.	_____	_____