



INDEPENDENT CONTRACTOR CHECKLIST

Whether a worker is an Independent Contractor or must be put on payroll as an employee is a question of facts and circumstances. The primary issue is whether the employer has the right to “direct and control the exact duties and manner in which a worker carries out those duties.”

There is no specific federal law defining a worker’s status, but over the years the IRS has produced a guideline that amounts to a 20-point checklist. The following chart compares the factors used by the IRS to determine if a worker is an independent contractor or an employee, and how important each factor is. Workers’ Compensation, the Department of Labor and your state may include other factors in the analysis.

The IRS 20-Point Checklist focuses on three main factors:

- How much control the employer has over the worker’s behavior and work results. (Who controls training, where and what time the person works, what equipment they use?)
- How much control the employer has over finances? (Does the employer have primary control over the person’s profit or loss?)
- What is the relationship between the parties? (Does the worker receive benefits? Is it a long-term relationship?)

The following questions will help you determine if your worker is a contractor or employee.

A “NO” answer to the following questions means the worker is more likely to be considered an INDEPENDENT CONTRACTOR:

Question	YES	No
Does the company exercise control over how the work is performed?		
Does the Company provide instructions?		
Is training provided to the worker?		
Must the services be performed by the worker and not by an assistant?		
Are there set work hours?		
Is the relationship ongoing?		

Does the company exercise any control over or pay the worker's assistants?

Does the Company control the location of the work?

Does the Company set the order in which the work is done?

Is the worker paid by the hour rather than by the job/ task?

Is the success or continuation of the company's business somewhat dependent on the type of service provided by the worker?

Is the work performed in the company's core line of business?

Does the Company reimburse expenses?

Does the Company supply the worker with tools or equipment?

Can the worker be fired "at will"?

Is the worker paid for partial work?

Was the worker hired by the same person who hires employees at the Company?

A "YES" answer to the following questions means the worker is more likely to be considered an EMPLOYEE:

Question	YES	No
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Are payments made to a business (corporation or Limited Liability Company) rather than an individual?

Has the worker made a significant investment in his own business?

Does the worker perform or have time to perform services for other companies?

Does the worker perform services for many other companies?

Does the worker offer services to the public?

Can the worker make a profit or loss?

Does the person have a distinct occupation or operate a separate business?

Is the relationship part of the industry practice?

Does the work performed require skill?

Is much initiative, judgment or foresight needed for the worker to succeed?

is the worker subject to any form of noncompetition agreement?

In general, “no” answers to these questions make it more likely that your worker is an independent contractor. Merely having more “no” answers doesn’t guarantee independent contractor status. Some of the questions may be irrelevant in your situation or are of less important because the answers may apply equally to employees and independent contractors. The IRS also places more emphasis on some items of control than others. Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee or independent contractor.

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