

**INDEPENDENT CONTRACTOR/EMPLOYEE
STATUS DETERMINATION ELEMENTS – COMMON LAW**

ELEMENTS	EMPLOYEE	INDEPENDENT CONTRACTOR
1. Instructions	A worker who is required to comply with instructions about when, where, and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished. Some workers may perform services without receiving instructions because they are highly proficient and conscientious workers. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.	An independent contractor decides how to do the job, establishes his or her own procedures, and is not supervised. The entity engaging his or her services is only interested in the end result.
2. Training	Training of a worker by an experienced employee working with him or her, by correspondence, by required attendance at meetings, and by other methods is a factor of control indicating that the employer wants the services performed in a particular manner. This is especially true if the training is given periodically or at frequent intervals.	An independent contractor ordinarily uses his or her own methods and receives no training from the principal. He or she is not required to attend meetings.
3. Integration	If the worker's services are so integrated into an employer's operations that the success or continuation of the business depends on the performance of the services, it generally indicates employment.	If the individual's performance of service and those of the assistants establish or affect his or her own business reputation and not the business reputation of those who purchase their services, it is an indication of an independent contractor relationship.
4. Services Rendered Personally	If the services must be rendered personally, it indicates the employer is interested in the methods as well as the results.	An individual's right to substitute another's services without the principal's knowledge suggests the existence of an independent relationship.
5. Hiring Assistants	A worker performs services for an employer who hires, supervises, and pays assistants. If a worker hires and supervises assistants at the direction of the employer, he or she is acting as an employee in the capacity of a foreman for or representative of the employer.	An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor.
6. Continuing Relationship	The existence of a continuing relationship between a worker and the person for whom he or she performs services indicates an employer-employee relationship. If the arrangement consists of continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, are seasonal in nature, or if the person actually works for only a short time.	The relationship between an independent contractor and his or her client ends when the job is finished.

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7. Set Hours of Work	The establishment of set hours of work by the employer is a factor of control. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.	An independent contractor is the master of his or her own time.
8. Full-Time Work	Full-time work for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. Full-time does not necessarily mean an eight-hour day or a five-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and the customs in the locality. These conditions should be considered in defining full-time. Full-time services may be required even though not specified orally or in writing.	An independent contractor is free to work when he or she chooses and to set his or her daily or weekly schedule. An independent contractor would normally perform services less than full time for one principal.
9. Work Done on Premises	Doing the work on the employer's premises, on a route, or at a location designated by an employer implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he or she wants to use these facilities. However, the fact that work is done off the premises does not indicate freedom from control since some occupations (for example, construction workers) are necessarily performed away from the premises of the employer.	Doing work away from the principal's premises when it could be done on the principal's premises indicates a lack of control, especially when the work is free from supervision.
10. Order or Sequence Set	If a worker must perform services in the order or sequence set by the employer, it shows that the worker is not free to follow an independent pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of the occupation, the employer either does not set the order of the services or sets them infrequently. Control is sufficiently shown, however, if the employer retains the right to do so.	If the principal is not interested in the order or sequence by which the individual completes the work, there is an indication that there is a lack of control over the manner and means by which the work is performed.
11. Reports	The submission of regular oral or written reports indicates control since the worker must account for his or her actions.	An independent contractor is not required to file reports that constitute a review of his or her work. (However, reports related only to an end result are not an indication of employment or independence.)

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12. Payments	<p>Payment by the hour, week, or month generally represents an employer-employee relationship</p> <p>The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.</p>	<p>Payment on a commission or job basis is customary where the worker is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour.</p>
13. Expenses	<p>Payment of the worker's business and travel expenses by the employer indicates control over the worker.</p>	<p>A worker who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since the person is accountable to no other person for the expenses, the person is free to work according to his or her own methods and means.</p>
14. Tools and Materials	<p>The furnishing of tools, materials, etc., by the employer indicates control over the worker. In some occupations and industries, it is customary for workers to provide their own tools, which are usually small hand tools; in that case, workers may be considered to be employees.</p>	<p>When a worker furnishes tools and materials, especially when a substantial sum is involved, there is an indication of independence.</p>
15. Investment	<p>The furnishing of all necessary facilities by the employer tends to indicate an employment relationship.</p> <p>Facilities generally include equipment or premises necessary for the work, but not tools, instruments, clothing, etc., that are commonly provided by employees in their particular trade.</p>	<p>A significant investment by the worker in facilities used by him or her in performing services for another tends to show independent contractor status.</p> <p>In order to be significant, the investment must be real, essential, and adequate.</p>

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16. Profit or Loss	When workers are insulated from loss or are restricted in the amount of profit they can gain, they are usually employees. The opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.	<p>The possibility of a profit or loss for the worker as a result of his or her services generally shows independent contractor status. Profit or loss implies the use of capital by the worker in an independent business. Whether a profit is realized or loss suffered generally depends on management decisions; that is, the one responsible for a profit or loss can use his or her own ingenuity, initiative, and judgment in conducting the business or enterprise. Factors that affect whether or not there is a profit or loss are whether the worker:</p> <ul style="list-style-type: none"> • Hires, directs, and pays assistants. • Has his or her own office equipment, materials, or other facilities for doing the work. • Has continuing and recurring liabilities or obligations. • Succeeds or fails depending on the relation of his or her receipts to his or her expenditures. • Agrees to perform specific jobs for prices agreed upon in advance. • Pays expenses incurred in connection with the work. <p>Independent contractors typically can invest significant amounts of time or capital in their work without any guarantee of success.</p>

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17. Works for More Than One Person or Firm	It is possible that a person may work for a number of people or firms and still be an employee of one or all of them because he or she works under the control of each firm.	Work for a number of persons or firms at the same time usually indicates an independent contractor status because the worker is usually free, in such cases, from control by any of the firms.
18. Offers Services to the General Public	If a worker performs services for only one person, does not advertise his or her services to the general public, does not hold licenses or hire assistants, and performs services on a continuing basis, it is an indication of an employment relationship.	The availability of services to the general public usually indicates independent contractor status. This may be evidenced by the worker having his or her own office and assistants, hanging out a “shingle” in front of his or her own home or office, holding business licenses, maintaining business listings in telephone directories, or advertising in newspapers, trade journals, magazines, etc.
19. Right to Fire	If an employer has the right to discharge an individual at will and without liability, that worker is considered an employee. The employer exercises the control through the ever present threat of dismissal, which causes the worker to obey instructions. A restriction on the employer’s right to discharge in a labor union contract does not detract from the existence of an employment relationship.	An independent contractor cannot be discharged as long as he or she produces a result that measures up to his or her contract specifications. However, the relationship can be terminated with liability.
20. Right to Quit	The right to quit at any time without incurring liability indicates an employer/employee relationship.	An independent contractor usually agrees to complete a specific job, and he or she is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.
21. Custom in Industry and Location	If the work is traditionally done by civil service employees under the direction of a supervisor, it is an indication of employment.	If the work is done by outside specialists, it is an indication of independence.
22. Required Level of Skill	A low level of technical skill is strong evidence of employment, since as the skill level declines, there is less room to exercise the discretion necessary for independence.	A high level of technical skill is important when combined with other factors such as owning a separate and distinct business.

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23. Belief of the Parties	<p>It is an indication of employment if:</p> <ul style="list-style-type: none"> • Both parties (the worker and the State) believe the relationship is employment. • Either party believes that the relationship is employment. 	<p>If the parties agree that the relationship is one of independence, it may be. However, consideration should be given to the fact that many individuals do not know how employment determinations are made and believe they are independent contractors because they are told they are.</p>
24. Business Decisions	<p>Employees cannot make business decisions that would enable them to earn a profit or incur a financial loss.</p>	<p>Independent contractors make business decisions that enable them to earn a profit or incur a loss. Investment of the worker's time is not sufficient to show a risk of loss.</p>