

Think Forward!

Addressing Administrative Challenges



*"I think the one lesson I have learned is that there is
no substitute for paying attention."
Diane Sawyer*

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Employment Status - Employee or Independent Contractor?

The test to determine whether personnel is an employee or independent contractor depends on the extent to which the person receiving the services has the right to direct and control the service provider with regard to what is to be done, and how it is to be done.

Employee

- Has the right to control how the service is performed.

Independent Contractor

- Determine for themselves how the work is to be performed.

If they are an Employee, Employers must:

- File returns throughout the year.
- Provide W-2's by January 31st each year.

The Employee may also have rights to:

- Health insurance
- Vacations
- Holidays
- Retirement plans

If they are an Employee, Employers must withhold:

- Federal tax
- State tax
- Local tax
- 1/2 of FICA tax
- Federal unemployment tax State unemployment tax
- Worker's compensation

20 Factor Control Test

<http://www.Paychex.com>

Instructions

Is the person required to comply with instructions about when, where, and how work is to be performed? If yes - may suggest Employee status.

Training

Is the person trained to do a job in a particular method or manner? Independent Contractor usually uses his or her own methods and doesn't receive training from the purchaser of his or her services.

Integration

Are the services performed integrated into the operations of the business? Usually shows the person is subject to control and may be an Employee.

Personal services

Does the business require that the services be performed in person and does the Employer have substantial interest in how the results will be achieved? If yes - may suggest Employee status.

Use of Assistants

An Independent Contractor hires, directs, and pays for his or her own supplies, his or her own materials; and works under a contract providing that the worker is responsible only to achieve certain results.

Ongoing relationship

Whether part time, seasonal, or just irregular, ongoing work suggests the worker is likely to be an Employee.

Fixed hours of work

Independent Contractors set their own work hours while Employees' hours are determined by the Employer.

Full time work

This suggests Employee status because the Employer controls the time of work and restricts the worker from taking other jobs.

Work location

If the worker performs services away from the Employer's premises ("off-site"), this may suggest Independent Contractor status. Many properly classified Independent Contractor's will work on the Employer's premises.

Work flow

Routines, schedules, and patterns established by the Employer for a worker indicate Employee status.

Reports

Whether written or oral, requiring regular reports usually suggest Employee status.

Manner of payment

Being paid by the hour, week, or month suggests being an Employee. Being paid on an agreed upon lump sum for a job suggests being an Independent Contractor. Employers may also use this method of payment for Employees.

Payment of expenses

If an Employer pays expenses, this usually means he or she has the right to regulate and direct business activities and indicates Employee status.

Multiple clients

Working for multiple clients usually indicates Independent Contractor status.

Providing tools and equipment

Independent Contractors usually provide their own equipment while Employees use those belonging to the Employer.

Investment

If the worker has a significant investment in his or her own work facilities, this implies being an Independent Contractor.

Profit or loss

Independent Contractors can realize a profit or incur loss. The risk of loss may be a result of investments in equipment or due to a liability for other expenses.

Marketing

Employees don't normally market their services to the public on a regular basis, while Independent Contractors might.

Right to discharge

If the Employer can discharge the worker at any given time, this suggests employment. An Independent Contractor cannot be dismissed (without legal liability) unless the contract specifications are not met.

Right to quit

An Independent Contractor may be liable for failure to perform according to contract, while an Employee may quit at any time.