

# Employee or Independent Contractor?



Business owners are required by law to correctly determine whether their workers are employees or independent contractors. When making this determination, employers must consider **Behavioral Control**, **Financial Control**, and the **Type of Relationship**.

## Behavioral Control

*Does the business have the right to direct and control the worker?*

Areas to consider	Independent Contractor	Employee
Type of instructions given	The worker can decide when and where to work, what tools and equipment to use, what workers to hire or assist with the work, where to purchase supplies, etc.	The worker is subject to the company's instructions about when, where, and how to work.
Degree of instruction	The company gives less detailed instructions to the worker.	The company gives more detailed instructions to the worker.
Evaluation systems	The company uses an evaluation system to measure only the end result of the work.	The company uses an evaluation system to measure the details of how the work is performed and the result of the work.
Training	The worker ordinarily uses his/her own methods to perform the work.	The company may provide the worker with training on how to do the job, and wants the work performed in the way indicated by training.

## Financial Control

*Does the business have the right to direct and control the economic aspects of the worker's job?*

Areas to consider	Independent Contractor	Employee
Significant investment	The worker may or may not have a significant investment in the equipment he/she uses.	The worker may or may not have a significant investment in the equipment he/she uses.
Unreimbursed expenses	The worker is more likely to have unreimbursed expenses. The worker is likely to have fixed, ongoing costs that are incurred regardless of whether work is currently being performed.	The worker is less likely to have unreimbursed expenses.
Opportunity for profit or loss	The worker has a greater opportunity/possibility to lose money (i.e. their expenses will exceed their income from the work).	The worker is less likely to incur a profit loss.
Services available to the market	The worker is generally free to seek out other business opportunities. The worker can often advertise, maintain a visible business locations, and are available to work in the market.	The worker may or may not be allowed to seek out other business opportunities.
Method of payment	The worker is generally paid by a flat fee for the job.	The worker is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time.

## Type of Relationship

*What facts show how the worker and business perceive their relationship to each other?*

Areas to consider	Independent Contractor	Employee
Written contracts	A written/signed contract is not sufficient to determine the worker's status.	A written/signed contract is not sufficient to determine the worker's status.
Employee benefits	The company does not provide benefits to the worker.	The company may or may not provide benefits to the worker
Permanency of the relationship	The worker is hired for a specific project or period.	The worker is hired with the expectation that the relationship will continue indefinitely.
Services provided as key activity of the business	The worker provides services that are not a key aspect of the business and thus the company does not have the right to direct or control his/her activities.	The worker provides services that are a key aspect of the business.

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor and keep in mind that factors which are relevant in one situation may not be relevant in another. The key is to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

In addition to the above guidelines, there are a variety of “tests” that can help employers make a correct determination and should be utilized. For example, The Department of Labor (DOL) recommends that employers conduct an “economic realities test,” which looks at whether the worker is economically dependent on the employer, thereby making the worker an employee, versus whether the worker has economic independence and is in business for him or herself, making the worker an independent contractor. Additional “tests” and classification information can be obtained by downloading DOL Fact Sheet #13.

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*These guidelines were issued by the IRS to determine whether a person is an independent contractor or an employee. The above table is not intended as a checklist, as the existence of none, some, or all factors listed above does not in itself establish a determination whether a worker is an employee or independent contractor. Further clarification should be obtained from a tax professional and/or your attorney; ALTRES assumes no liability or responsibility should you misclassify a worker.*