

Confusion With Independent Contractors v. Employees

By Natalie Lynch
Lynch Law Firm

Businesses may hire independent contractors and employees, and it is important that they understand the differences between these two classifications. Independent contractors do not get the same legal protections as employees do, such as being eligible for unemployment benefits or being protected by labor laws. Independent contractors often do not receive benefits of any type. Due to these distinctions, it is important for businesses to clearly classify independent contractors. Without proper classification, an independent contractor may be able to make claims reserved for employees if a court or governmental agency decides that it was actually an employee instead of an independent contractor. The business may even be held responsible for paying payroll taxes on behalf of the newly-classified employee and face significant monetary penalties.

Right of Control Test

The Internal Revenue Service and other government agencies use the right of control test to determine whether an individual is an independent contractor or employee. If the employer has the right to control how the work is performed then the worker is considered an employee. However, if the business can only accept or reject the final product, then the person is considered an independent contractor. The IRS uses about 20 factors to evaluate who controls the work performed. The more control a company exercises over the work that is performed, the more likely that the worker will be classified as an employee. A worker does not have to meet all of the factors in order to be considered an employee or independent contractor. No one specific factor is dispositive. The IRS also gives

different weight to different factors depending on the individual circumstances. Every state has additional tests. For example, Texas has an excellent chart to help make the evaluation more clear.

Factors

Some of the factors that are considered include:

Level of Instruction

An employee relationship is more likely to be determined when a worker is directed as to how to perform his or her work, when to perform it and where to perform it. Independent contractors generally have more freedom in these regards.

Training

Company-provided training suggests an employee relationship because the business is directing the methods by which the work should be performed.

On-Site Services

An employment relationship is suggested when the employer requires the worker to be at the company site even when the work can be performed somewhere else because this gives the employer more control over the worker.

Sequence of Work

When the employer determines the sequence of work such as which work should be performed first and last, this suggests greater control and an employment relationship.

Schedule

When a worker is required to work full-time hours, this is indicative of an employment relationship because the company has greater control over a majority of the client's time. Contractors have more flexible schedules while employees have more set hours.

Payment

An important difference between employees and independent

contractors is how they are paid. Employment relationships may be based on hourly, weekly or monthly pay schedules. However, contractors are often paid based on project completion or by commission. Additionally, an employer may pay for business or travel expenses while an independent contractor is usually expected to pay these costs on its own. Likewise, an employer may provide tools and other materials necessary to complete a job for employees while an independent contractor must usually supply his or her own tools and materials.

Business Integration

Workers who perform tasks that are integrated into the business are more likely to be found to be employees rather than independent contractors.

Assignment

Employees are usually expected to perform the work themselves. However, independent contractors are often able to delegate work to another person. Likewise, contractors may be able to hire, pay and supervise people who assist him or her. If the business controls assistants, there is more likely to be an employee relationship than a contractual one.

Termination

Employees can often be terminated for any reason or no reason in at-will states. However, contractors often have a contract that must be followed in order to avoid liability for early termination. The contract terms usually govern termination. Likewise, employees can usually quit their jobs for any reason while independent contractors usually cannot terminate the working relationship without ramification.

Carefully evaluating these factors can help businesses avoid possible liability associated with misclassifying employees.

Join Our LinkedIn Group

