

Independent Contractor

A person who contracts to do work for another person according to his or her own processes and methods; the contractor is not subject to another's control except for what is specified in a mutually binding agreement for a specific job.

An independent contractor contracts with an employer to do a particular piece of work. This working relationship is a flexible one that provides benefits to both the worker and the employer. However, there are drawbacks to the relationship as well. The decision to hire or work as an independent contractor should be weighed carefully. Properly distinguishing between employees and independent contractors has important consequences, and the failure to maintain the distinction can be costly.

Taxes

The status of independent contractor carries with it many tax ramifications. For example, an employee shares the costs of [Social Security](#) and [Medicare](#) taxes with his or her employer; whereas an independent contractor is responsible for the entire amounts. Yet independent contractors generally qualify for more business deductions on their federal income taxes than do employees. Also, independent contractors must pay estimated taxes each quarter, whereas employees generally have taxes withheld from their paychecks by their employer.

One important disadvantage of working as an independent contractor is that standard employment benefits—such as health, life, dental, and disability insurance; funded retirement plans; paid vacation time; and paid maternity or [Paternity](#) leave—are not available. Independent contractors may fund their own benefits, but not on a tax-free basis—whereas many benefits provided by employers to employees are, by law, tax free.

Labor Relations

Congress and the states have enacted numerous laws geared toward protecting employees. The National Labor Relations Act (29 U.S.C.A. § 152(3)) protects employees and union members from unfair bargaining practices; Title VII of the [Civil Rights Act of 1964](#) (42 U.S.C.A. § 2000 et seq.) protects employees from discrimination on the basis of race, sex, religion, and national origin; the Age Discrimination in Employment Act (29 U.S.C.A. § 623) protects employees from age discrimination; the [Fair Labor Standards Act](#) (29 U.S.C.A. § 203) establishes [Minimum Wage](#) and overtime standards; the [Employee Retirement Income Security Act](#) of 1974 (29 U.S.C.A. § 1002) ensures the security of employee retirement funds; and the OCCUPATIONAL SAFETY AND HEALTH ACT (29 U.S.C.A. § 652) protects employees from environmental work hazards. Most states also have unemployment and WORK-ERS' COMPENSATION laws, which obligate employers to pay, directly or indirectly, for medical treatment or lost wages, or both, for employees who are injured while at work or who lose their job. None of these laws protect independent contractors. And because compliance often comes at great expense, employers can significantly reduce their liability and increase their profit margin by hiring independent contractors rather than employees.

Economics and Social Policy

Although not protected by law to the extent of an employee, an independent contractor has far greater control over elements such as work hours and work methods. Unlike most employees, an independent contractor may opt to work at night or on weekends, leaving weekdays free. An independent contractor may choose to wear blue jeans or a business suit, take one week of vacation or 30 weeks, or interrupt work to attend a child's school play or to go to the beach. Moreover, although the other contracting party retains control over the finished work product, an independent contractor has exclusive control over the actual work process. Decisions such as whether to work for one person or several, whether to work a little or a lot, whether to accept or reject an undesirable work project, and how much money to charge are made by the independent contractor.

The other party, in turn, enjoys mainly profit-related advantages by hiring an independent contractor instead of an employee. For one thing, an employer need not provide an independent contractor with vacation time, [Pension](#), insurance, or other costly benefits. Management costs that ordinarily go toward training and overseeing large numbers of employees decrease when independent contractors do the work. Some say that because independent contractors benefit directly from their hard work, the quality of their work may be higher than it is for full-time employees who might be less motivated. And by hiring independent contractors, an employer enjoys the greater ease and flexibility to expand and contract the workforce as demand rises and falls.

Tort Liability

The common-law doctrine of [Respondeat Superior](#) holds an employer liable for the negligent acts of its employee. Generally, under [Common Law](#), the hiring party is not responsible for the [Negligence](#) of an independent contractor. The Restatement (Second) of Torts identifies a few exceptions to this rule. The hiring party may be liable when, owing to its failure to exercise reasonable care to retain a competent and careful contractor, a third party is physically harmed. Also, when an independent contractor acts pursuant to orders or directions negligently given by the hiring party, the latter may be held liable. Notwithstanding the exceptions, the hiring party's risk of liability is greatly reduced by hiring independent contractors rather than employees.

Defining the Independent Contractor

No consistent, uniform definition distinguishes an employee from an independent contractor. Some statutes contain their own definitions. The U.S. Supreme Court has held that when a statute contains the term *employee* but fails to define it adequately, there is a presumption that traditional agency-law criteria for identifying master-servant relationships apply (*National Mutual Insurance Co. v. Darden*, 503 U.S. 318, 112 S. Ct. 1344, 111 L. Ed. 2d 581 [1992]).

One comprehensive test that takes into account agency-law criteria and numerous other factors courts have created to define independent contractor status was developed by the [Internal Revenue Service](#) (IRS). Known collectively as the 20-factor test, the enumerated criteria

generally fall within three categories: control (whether the employer or the worker has control over the work performed), organization (whether the worker is integrated into the business), and economic realities (whether the worker directly benefits from his or her labor). The 20 factors serve only as a guideline. Each factor's degree of importance varies depending on the occupation and the facts involved in a particular case.

Twenty-factor Test

1. A worker who is required to comply with *instructions* about when, where, and how he or she must work is usually an employee.
2. If an employer *trains* a worker—requires an experienced employee to work with the worker, educates the worker through correspondence, requires the worker to attend meetings, or uses other methods—this normally indicates that the worker is an employee.
3. If a worker's services are *integrated* into business operations, this tends to show that the worker is subject to direction and control and is thus an employee. This is the case particularly when a business's success or continuation depends to a large extent on the performance of certain services.
4. If a worker's services must be *rendered personally*, there is a presumption that the employer is interested in the methods by which the services are accomplished as well as in the result, making the worker an employee.
5. If an employer *hires, supervises, and pays assistants* for a worker, this indicates control over the worker on the job, making the worker an employee.
6. A *continuing relationship* between a worker and an employer, even at irregular intervals, tends to show an employer-employee relationship.
7. An employer who sets *specific hours of work* for a worker exhibits control over the worker, indicating that the worker is an employee.
8. If a worker is working *substantially full-time* for an employer, the worker is presumably not free to do work for other employers and is therefore an employee.
9. Work performed on an *employer's premises* suggests the employer's control over a worker, making the worker an employee. This is especially true when work could be done elsewhere. However, the mere fact that work is done off the employer's premises does not necessarily make the worker an independent contractor.
10. If a worker is required to perform services in an *order or sequence* set by an employer, the employer has control over the worker that demonstrates an employer-employee relationship.
10. A worker who is required to submit regular *oral or written reports* to an employer is likely an employee.
11. *Payment by the hour, week, or month* tends to indicate that a worker is an employee; payment made by the job or on a straight commission points to an independent contractor.
12. A worker is ordinarily an employee if an employer pays for the worker's *business or travel expenses*.
13. An employer who furnishes a worker with significant *tools, materials, or other equipment* tends to show that the worker is an employee.
14. A worker who *significantly invests* in facilities used to perform services and not typically maintained by employees (such as office space) is generally an independent contractor.

15. A worker who can *realize a profit or loss* resulting from his or her services is generally an independent contractor.
16. A worker who performs *for more than one firm at a time* is generally an independent contractor.
17. If a worker makes his or her *services available to the general public* on a regular and consistent basis, that worker is generally an independent contractor.
18. An employer's *right to discharge* a worker tends to show that the worker is an employee. An employee must obey an employer's instructions in order to stay employed; an independent contractor can be fired only if the work result fails to meet the agreed-upon specifications.
19. If a worker has the *right to terminate* his or her relationship with an employer at any time without incurring liability, such as breach of contract, that worker is likely an employee.

Further readings

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Cross-references

[Employment Law](#); [Labor Law](#); [Master and Servant](#).

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independent contractor n. a person or business which performs services for another person or entity under a contract between them, with the terms spelled out such as duties, pay, the amount and type of work and other matters. An independent contractor is distinguished from an employee, who works regularly for an employer. The exact nature of the independent contractor's relationship with the party hiring him/her/it has become vital since an independent contractor pays his/her/its own social security, income taxes without payroll deduction, has no retirement or health plan rights, and often is not entitled to workers' compensation coverage. Public agencies, particularly the Internal Revenue Service, look hard at independent contractor agreements when it appears the contractor is much like an employee. An independent contractor must be able to determine when and where work is performed, be able to work for others, provide own equipment, and other factors which are indicative of true independence. (See: [employee](#))