



Employee or Independent Contractor?

Right Worker. Right Category.

Use this checklist to help determine whether the worker should be classified as an Employee or an Independent Contractor under the IRS's three-factor framework: Behavioral Control, Financial Control, and the Type of Relationship.

For each indicator, mark the column that best reflects the actual working relationship. Do not mark both columns for the same item. After completing the checklist, tally the marks in each column to see which classification the facts support.

These indicators are based on IRS regulations, published guidance, and relevant court decisions. Even if the results appear clear, you should still review the worker's situation with our office or a qualified tax attorney. Worker classification carries significant tax, payroll, and compliance consequences.

This checklist is for informational purposes only. It is not intended or written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code.

Category One: Behavioral Control

These indicators address how much direction and oversight the employer has over how the work is performed.

	Worker May Be an Employee if...	Worker May Be an Independent Contractor if...
Instruction	<input type="checkbox"/> Worker receives oral or written job procedures, training, and procedures manuals.	<input type="checkbox"/> Employer gives no training and limits information to the results required: the condition, style, quantity, or quality necessary.
	<input type="checkbox"/> Worker receives orders to waste less material, redo unfit work, or stop for Employer's convenience.	<input type="checkbox"/> Worker is responsible for materials usage and product quality.
	<input type="checkbox"/> Employer enforces penalties when worker fails to follow instructions.	<input type="checkbox"/> Payer enforces penalties only for unacceptable results.
	<input type="checkbox"/> Worker is unskilled.	<input type="checkbox"/> Worker has previously acquired professional knowledge about how work should be done.
Training	<input type="checkbox"/> Instructions are extremely detailed.	<input type="checkbox"/> Instructions contain little detail.
	<input type="checkbox"/> Employer provides or pays for job training programs.	<input type="checkbox"/> Worker acquires own professional training.
	<input type="checkbox"/> Training is mandatory or time is compensated.	<input type="checkbox"/> Training is voluntary or not compensated.
Who Specifies the Work	<input type="checkbox"/> Employer requires that work be performed by named individuals.	<input type="checkbox"/> Employer requests specific individuals because of their skills, expertise, and reputation.
	<input type="checkbox"/> Worker lacks any right to delegate work to an assistant.	<input type="checkbox"/> Worker retains the right to select and delegate to assistants or subcontractors.

Available to the Public	N/A	<input type="checkbox"/> Worker maintains a separate location from Employer.
	<input type="checkbox"/> Worker does not advertise.	<input type="checkbox"/> Worker advertises in yellow pages, newspapers, mailings, on stationery, radio and TV, uniforms, or vehicles.
	<input type="checkbox"/> Worker operates under the Employer's licenses and governmental permits, has no separate business forms, wears Employer's uniform, drives vehicle with Employer's logo, uses business card with Employer's logo, and has not created a separate legal entity.	<input type="checkbox"/> Worker has professional licenses, governmental permits, sales tax certificates, custom business forms with logo, stationery, and incorporation or assumed name certificates.
Available to the Public (cont.)	<input type="checkbox"/> Worker is included on the Employer's business insurance and bonding.	<input type="checkbox"/> Worker provides business insurance coverage and bonding..
	<input type="checkbox"/> The public, vendors, and customers believe worker is an employee.	<input type="checkbox"/> Others believe worker is an IC.
	<input type="checkbox"/> Cash receipts go directly to Employer. Worker keeps no separate books, records, and bank accounts.	<input type="checkbox"/> Cash receipts go to worker, who maintains separate books, records, and bank accounts.
	N/A	<input type="checkbox"/> Employer disclaims responsibility for correcting worker's problems.
	<input type="checkbox"/> Worker is a former employee performing substantially the same duties.	N/A
Employing Assistants	<input type="checkbox"/> Employer exercises (directly or through approval) hiring, supervision, and termination authority.	<input type="checkbox"/> Only the worker has hiring, supervision, and termination approval and authority.
	<input type="checkbox"/> Worker does not have a separate Federal Employer Identification Number.	<input type="checkbox"/> Worker has a separate Federal Employer Identification Number.
	<input type="checkbox"/> Employer pays worker's assistants directly and remits payroll taxes.	<input type="checkbox"/> Worker uses own funds to pay assistants and remits payroll taxes.
	<input type="checkbox"/> Assistants believe Employer is their employer.	<input type="checkbox"/> Assistants believe worker is their employer.
	<input type="checkbox"/> Worker is only a conduit between Employer and assistants and has no chance for profit or loss.	<input type="checkbox"/> Worker can have profit or loss on wages of assistants.
Hours of Work	<input type="checkbox"/> Employer sets and enforces work hours.	<input type="checkbox"/> Worker sets hours.
	<input type="checkbox"/> Full-time Effort:	
	<input type="checkbox"/> Worker is required to devote full-time effort to servicing the Employer.	<input type="checkbox"/> Worker pursues similar work from other, unrelated businesses.
	<input type="checkbox"/> Worker has no say in accepting work from the Employer.	<input type="checkbox"/> Worker turns down work from the Employer.
Job Location	<input type="checkbox"/> Employer requires work to be performed at business location where Employer can exercise supervision.	<input type="checkbox"/> Worker is free to choose where services are performed.
Sequence of Work	<input type="checkbox"/> Employer requires work to be performed in specific sequence.	<input type="checkbox"/> Worker determines sequence of work procedures.
Reporting	<input type="checkbox"/> Employer requires regular time sheets, expense reports, progress reports, and other oral and written reports.	N/A
	<input type="checkbox"/> Employer requires attendance at regular project status meetings.	N/A

Category Two: Financial Control

These indicators focus on who controls the financial aspects of the work, including pay structure, tools, and expenses.

	Worker May Be an Employee if...	Worker May Be an Independent Contractor if...
Fixed Pay	<input type="checkbox"/> Payment is based on time: hourly wages, salary, bonuses, drawing accounts, minimum amounts, and advances. Often, fixed amounts are paid at fixed intervals.	<input type="checkbox"/> Payment is based on each job where the worker assumes the risk that pay is not guaranteed, such as commission, bid, or piecework.
	<input type="checkbox"/> Employer regulates lunch times, breaks, and work hours.	<input type="checkbox"/> Worker sets own lunch times, breaks, and work hours.
	<input type="checkbox"/> Payment is not contingent upon Employer's review and acceptance of work product.	<input type="checkbox"/> Employer reviews and accepts finished product before paying.
	<input type="checkbox"/> Worker is paid when employees are paid.	<input type="checkbox"/> Worker is paid separately from employees.
	<input type="checkbox"/> Worker does not invoice Employer for services rendered.	<input type="checkbox"/> Worker invoices Employer for services.
	<input type="checkbox"/> Worker's contract and other documents are kept with Employer's personnel files.	<input type="checkbox"/> Worker's contract, invoices, and other documents are kept in Employer's vendor files.
	<input type="checkbox"/> Employer withholds payroll taxes and issues worker Form W-2	<input type="checkbox"/> Employer issues worker a Form 1099.
	<input type="checkbox"/> Employer reimburses out-of-pocket expenses.	<input type="checkbox"/> Cost of out-of-pocket expenses is covered in contracted fee.
	<input type="checkbox"/> Employer has review and approval authority for reimbursements.	<input type="checkbox"/> Employer cannot review and approve reimbursements.
Tools and Supplies	<input type="checkbox"/> Worker uses company tools and vehicles.	<input type="checkbox"/> Worker provides tools and vehicles.
	<input type="checkbox"/> Employer bears costs of damage to tools and equipment.	<input type="checkbox"/> Worker bears risk of damage to tools and equipment.
	<input type="checkbox"/> Employer transports supplies to the job site, bears the cost of damage and waste, and retains unused materials.	<input type="checkbox"/> Worker provides supplies, bears the cost of damage and waste, and keeps material.
Outside Work	<input type="checkbox"/> Worker can work only for the Employer or a related entity; only give outside work a lesser priority; or only accept outside work with the Employer's approval.	<input type="checkbox"/> Worker has the ability to solicit work from others, especially competitors.
	N/A	<input type="checkbox"/> Worker gives at least equal priority to other firms' projects.
	<input type="checkbox"/> Worker has few sources of Forms 1099-MISC.	<input type="checkbox"/> Worker conducts simultaneous projects with independent businesses.
	<input type="checkbox"/> Worker signs a non-compete clause.	<input type="checkbox"/> Worker signs a secrecy clause.

Category Three: Relationship of the Parties

These indicators examine how the parties define and structure their working relationship.

	Worker May Be an Employee if...	Worker May Be an Independent Contractor if...
Integration	<input type="checkbox"/> Worker performs tasks that are ordinary and necessary to the business's success.	<input type="checkbox"/> Tasks are the type that ICs traditionally perform, such as delivery of a finished product or professional services.
	<input type="checkbox"/> Worker is required to perform sundry tasks in unskilled areas.	<input type="checkbox"/> Worker uses unusual, technical, or specialized skills not used in Employer's general business.
	<input type="checkbox"/> Employer's employees join with the worker in preparing the materials, using the materials, or cleaning up.	<input type="checkbox"/> Worker takes care of job from beginning preparation through ending cleanup.
		<input type="checkbox"/> No Employer employees are used.
<input type="checkbox"/> Worker performs tasks and receives treatment similar to employees.	<input type="checkbox"/> Worker performs unique tasks and is consistently treated differently than employees.	

Termination	<input type="checkbox"/> Worker may be terminated "at will," for any or no reason.	<input type="checkbox"/> Worker may sue Employer for breach of contract unless the contract's cancellation clauses are followed.
Quitting	<input type="checkbox"/> Worker may quit at any time without notice, for any or no reason.	<input type="checkbox"/> Worker may be liable to Employer for breach of contract unless the contract's cancellation clauses are followed.
Relationship	<input type="checkbox"/> Work is continuous or for an indefinite period.	<input type="checkbox"/> Work is a discrete project of limited duration.
	<input type="checkbox"/> No written agreement governs the work.	<input type="checkbox"/> Worker and Employer sign a new written agreement for each assignment.
	<input type="checkbox"/> Worker does not compete for the business.	<input type="checkbox"/> Worker solicits the business.
	<input type="checkbox"/> Worker is economically dependent upon Employer.	<input type="checkbox"/> Worker has economic viability beyond reliance on Employer.
Benefits	<input type="checkbox"/> Worker receives paid vacation or sick days; health, life, or disability insurance; a pension plan; or a tax qualified retirement or benefit plan available only to employees.	<input type="checkbox"/> Worker does not participate in such plans.
Intent	<input type="checkbox"/> Worker and Employer have no written Independent Contractor agreement.	<input type="checkbox"/> Worker and Employer have signed Independent Contractor agreement.

Total: _____	Total: _____
If the total number of checked boxes in this column are greater... Then the worker may be an employee.	If the total number of checked boxes in this column are greater... Then the worker may be an independent contractor.

The Bottom Line: Hire Smart, Choose Wisely.

Even if the checklist leans clearly toward one classification, a professional review is still recommended. Worker classification affects payroll taxes, reporting obligations, and compliance exposure.

This checklist is for general informational purposes only. It is not authoritative and cannot be used to avoid penalties under the Internal Revenue Code.

Not sure how to classify a new worker? We can help you make the right determination and keep your business protected and complaint.



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