

EMPLOYEE versus INDEPENDENT CONTRACTOR



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Factors to consider

To help you understand the process, we explain each factor below and show some indicators that the worker may be an employee or a self-employed individual.

Control

Control is the ability, authority, or right of a payer to exercise control over a worker concerning the manner in which the work is done and what work will be done.

Degree of control or independence

Consider the degree of control held by the payer or the degree of independence held by the worker.

The actual degree of control will vary with the type of work and the skills of the worker.

Deciding the degree of control can be difficult when examining the employment of professionals such as engineers, doctors, and IT consultants. Because of their expertise and specialized training, they may need little or no specific direction in their daily activities. When examining the factor of control, it is necessary to focus on both the payer's control over the worker's daily activities and the payer's influence over the worker.

Payer's right to exercise control

It is the right of the payer to exercise control that is relevant, **not** whether the payer actually exercises this right.

It is the control of a payer over a worker that is relevant and **not** the control of a payer over the end result of a product or service purchased.

Indicators showing that the worker is an employee

- The relationship is one of subordination. The payer will often direct, scrutinize, and effectively control many elements of how and when the work is carried out.
- The payer controls the worker with respect to both the results of the work and the method used to do the work.

- The payer chooses and controls the method and amount of pay. Salary negotiations may still take place in an employer-employee relationship.
- The payer decides what jobs the worker will do.
- The payer chooses to listen to the worker's suggestions but has the final word.
- The worker requires permission to work for other payers while working for this payer.
- Where the schedule is irregular, priority on the worker's time is an indication of control over the worker.
- The worker receives training or direction from the payer on how to do the work. The overall work environment between the worker and the payer is one of subordination.

Indicators showing that the worker is a self-employed individual

- A self-employed individual usually works independently.
- The worker does not have anyone overseeing their activities.
- The worker is usually free to work when and for whom they choose and may provide their services to different payers at the same time.
- The worker can accept or refuse work from the payer.
- The working relationship between the payer and the worker does **not** present a degree of continuity, loyalty, security, subordination, or integration, all of which are generally associated with an employer-employee relationship.

Tools and equipment

Consider if the worker owns and provides tools and equipment to accomplish the work. Contractual control of, and responsibility for, an asset in a rental or lease situation is also considered under this factor.

What is relevant is the significant investment in the tools and equipment along with the cost of replacement, repair, and insurance. A worker who has made a significant investment is likely to retain a right over the use of these assets, diminishing the payer's control over how the work is carried out. In addition, such a significant investment may place the worker at a risk of a financial loss.

Note

Tools and equipment can vary widely in terms of value and can include everything from wrenches and hammers, to specialized clothing, appliances, stethoscopes, musical instruments, computers, and vehicles such as trucks and tractors.

Self-employed individuals often supply the tools and equipment required for a contract. As a result, the ownership of tools and equipment by a worker is more commonly associated with a business relationship.

However, employees sometimes also have to provide their own tools. The courts have acknowledged that because a worker is required to provide tools of the trade, this does not in itself mean that the worker is a self-employed individual. For example, many skilled

tradespeople such as auto mechanics have to supply their own tools, even if they are full-time employees.

Indicators showing that the worker is an employee

- The payer supplies most of the tools and equipment the worker needs. In addition, the payer is responsible for repair, maintenance, and insurance costs.
- The payer retains the right of use over the tools and equipment provided to the worker.
- The worker supplies the tools and equipment and the payer reimburses the worker for their use.

Indicators showing that the worker is a self-employed individual

- The worker provides the tools and equipment needed for the work. In addition, the worker is responsible for the costs of repairs, insurance, and maintenance to the tools and equipment.
- The worker has made a significant investment in the tools and equipment and the worker retains the right over the use of these assets.
- The worker supplies their own workspace, is responsible for the costs to maintain it, and does substantial work from that site.

Subcontracting work or hiring assistants

Consider if the worker can subcontract work or hire assistants. This factor can help decide a worker's business presence because subcontracting work or hiring assistants can affect their chance of profit and risk of loss.

Indicators showing that the worker is an employee

- The worker cannot hire helpers or assistants.
- The worker does not have the ability to hire and send replacements. The worker has to do the work personally.

Indicators showing that the worker is a self-employed individual

- The worker does not have to carry out the services personally. They can hire another party to either do the work or help do the work, and pay the costs for doing so.
- The payer has no say in whom the worker hires.

Financial risk

Consider the degree of financial risk taken by the worker. Consider if there are any fixed ongoing costs incurred by the worker or any expenses that are not reimbursed.

Usually, employees will not have any financial risk as any expenses will be reimbursed, and they will not have fixed ongoing costs.

Self-employed individuals, on the other hand, can have financial risk and incur losses because they usually pay fixed monthly costs even if work is not currently being done.

Employees and self-employed individuals may be reimbursed for business or travel expenses. Therefore, focus on the expenses that are **not** reimbursed by the payer.

Indicators showing that the worker is an employee

- The worker is not usually responsible for any operating expenses.
- Generally, the working relationship between the worker and the payer is continuous.
- The worker is not financially liable if they do not fulfil the obligations of the contract.
- The payer chooses and controls the method and amount of pay.

Indicators showing that the worker is a self-employed individual

- The worker hires helpers to assist in the work. The worker pays the hired helpers.
- The worker does a substantial amount of work from their own workspace and incurs expenses relating to the operation of that workspace.
- The worker is hired for a specific job rather than an ongoing relationship.
- The worker is financially liable if they do not fulfil the obligations of the contract.
- The worker does not receive any protection or benefits from the payer.
- The worker advertises and actively markets their services.

Responsibility for investment and management

Consider the degree of responsibility for investment and management held by the worker.

Is the worker required to make any investment in order to provide the services?

A significant investment is evidence that a business relationship may exist. You should also consider if the worker is free to make business decisions that affect their profit or loss.

Indicators showing that the worker is an employee

- The worker has no capital investment in the payer's business.
- The worker does not have a business presence.

Indicators showing that the worker is a self-employed individual

- The worker has capital investment.
- The worker manages their staff.
- The worker hires and pays individuals to help do the work.
- The worker has established a business presence.

Opportunity for profit

Consider whether the worker can realize a profit or incur a loss, as this indicates that a worker controls the business aspects of services rendered and that a business relationship likely exists. To have a chance of a profit and a risk of a loss, a worker has to have potential proceeds and expenses, and one could exceed the other.

This factor has to be considered from the worker's perspective, not the payer's. It is for the most part an assessment of the degree to which the worker can control their proceeds and expenses.

Employees normally do not have the chance of a profit and risk of a loss even though their remuneration can vary depending on the terms of their employment contracts. For example, employees working on a commission or piece-rate basis, or employees with a productivity bonus clause in their contract can increase their earnings based on their productivity. This increase in income is not normally viewed as a profit, as it is not the excess of proceeds over expenses.

Employees may have expenses directly related to their employment, such as automobile expenses, and board and lodging costs. Normally, expenses would not place employees at risk of incurring a loss because it is unlikely that the expenses would be greater than their remuneration.

Self-employed individuals normally have the chance of profit or risk of loss, because they have the ability to pursue and accept contracts as they see fit. They can negotiate the price (or unilaterally set their prices) for their services and have the right to offer those services to more than one payer. Self-employed individuals will normally incur expenses to carry out the terms and conditions of their contracts, and to manage those expenses to maximize net earnings. Self-employed individuals can increase their proceeds and/or decrease their expenses in an effort to increase profit.

Employees generally do not share in profits or suffer losses incurred by the payer's business.

The method of payment may help to decide if the worker has the opportunity to make a profit or incur a loss. In an employer-employee relationship, the worker is normally guaranteed a return for the work done and is usually paid on an hourly, daily, weekly, or similar basis.

Similarly, some self-employed individuals are paid on an hourly basis. However, when a worker is paid a flat rate for the work done, it generally indicates a business relationship, especially if the worker incurs expenses in doing the work.

Indicators showing that the worker is an employee

- The worker is not normally in a position to realize a business profit or loss.
- The worker is entitled to benefit plans that are normally offered only to employees. These include registered pension plans, and group accident, health, and dental insurance plans.

Indicators showing that the worker is a self-employed individual

- The worker can hire a substitute and the worker pays the substitute.
- The worker is compensated by a flat fee and incurs expenses in carrying out the services.