



20-Factor Test:

Employee Verses Independent Contractor

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The "20-factor test," also known as the "20-factor IRS test" or the "common law test," was historically used by the Internal Revenue Service (IRS) to determine whether a worker should be classified as an employee or an independent contractor. The test examines the degree of control and independence in the working relationship, focusing on three main categories: behavioral control, financial control, and the type of relationship between the parties.

It is important to note that the IRS has since updated its guidance to focus on these three broader categories rather than strictly adhering to the 20 factors. However, these factors still provide valuable insights into the considerations involved in determining worker classification. The original 20 factors are:

Behavioral Control

- 1. Instructions:** Employees are often required to comply with instructions about when, where, and how to work.
- 2. Training:** Providing systematic or ongoing training suggests an employee relationship.
- 3. Integration:** Workers whose services are integrated into business operations or significantly affect business success are likely considered employees.
- 4. Services Rendered Personally:** If the services must be rendered personally, this suggests that the employer is interested in the methods as well as the results.

Financial Control

- 1. Hiring Assistants:** If the employer hires, supervises, and pays assistants, this indicates an employee relationship.
- 2. Continuing Relationship:** A continuing relationship between the worker and the employer indicates an employee relationship.
- 3. Set Hours of Work:** The employer's establishment of set hours of work indicates control over the worker.
- 4. Full-Time Required:** If the worker must devote substantially full time to the business, this suggests control by the employer.
- 5. Work Done on Premises:** If the work is performed on the employer's premises, this may suggest control over the worker.
- 6. Order or Sequence Set:** If the employer sets the order or sequence of the work, this indicates employee status.
- 7. Reports:** Regular reports required by the employer may suggest an employee relationship.

Type of Relationship

- 1. Payment Method:** Employees are often paid by the hour, week, or month, while independent contractors are usually paid by the job or on a straight commission.
- 2. Expenses:** Reimbursement of the worker's expenses by the employer suggests an employee relationship.
- 3. Tools and Materials:** The provision of significant tools, materials, and other equipment by the employer suggests an employee relationship.
- 4. Investment:** A significant investment in the work by the worker indicates an independent contractor relationship.
- 5. Profit or Loss:** The possibility that the worker can realize a profit or incur a loss suggests an independent contractor relationship.
- 6. Works for Multiple Firms:** Working for multiple, unrelated companies simultaneously suggests an independent contractor relationship.
- 7. Availability to General Public:** Making services available to the general public on a regular and consistent basis indicates an independent contractor status.
- 8. Right to Fire:** The employer's right to fire the worker suggests an employee relationship.
- 9. Right to Quit:** The worker's right to quit work at any time without incurring liability suggests an employee relationship.

While this test provides a framework, the determination of a worker's status is not based on the presence or absence of any single factor but on the overall situation. The IRS and other government agencies now use a more streamlined approach to assess the relationship, focusing on the overall degree of control and independence. Businesses should consider these factors carefully and consult with HR, tax professionals, or legal when classifying workers to ensure compliance with current laws and regulations.