

What Factors Come into Play in Determining How to Pay a Worker

We are often asked whether someone can be paid as a 1099-Independent Contractor so the Employer (Our Client) can save money on taxes, etc. This area is under continuous scrutiny by the IRS and NYS Unemployment Insurance Dept. & NYS Dept. of Labor. We offer the following as a guide in determining the proper status.

Employment is a relationship established between an employee and employer. An employee is represented by an employer. An employer exercises control over an employee's conduct and activities performed within the scope of the business.

Employment laws are required in these types of relationships. Statutes include Social Security and income tax withholding, workers' compensation, unemployment assistance, and workplace safety provisions.

Another type of worker is an independent contractor. This person "contracts" a task or work with another party and is not controlled by the other.

Determinations between employees and independent contractors are based on many premises. Liability and control is a main topic of interest, since employers are liable for the actions of their employees. Control refers to what task and how a task shall be performed, and the greater the control an employer has over a task, the more likely a worker is an employee.

There are 20 factors used by the IRS which are commonly referred to indicate whether an individual is an employee or an independent contractor.

- 1. Instructions:** An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.
- 2. Training:** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
- 3. Integration:** An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
- 4. Services rendered personally:** An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
- 5. Hiring assistants.** An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the

result.

6. Continuing relationship. An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7. Set hours of work. An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.

8. Full-time work. An employee normally works full time for an employer. An independent contractor can work when and for whom he or she chooses.

9. Work done on premises. An employee works on the premises of an employer, or works on a route or at a location designated by an employer.

10. Order or sequence set An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.

11. Reports. An employee submits reports to an employer. This shows that the employee must account to the employer for his or her actions.

12. Payments. An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.

13. Expenses. An employer pays an employee's business and travel expenses. This shows that the employee is subject to regulation and control.

14. Tools and materials. An employer furnishes an employee significant tools, materials, and other equipment.

15. Investment. An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

16. Profit or loss. An independent contractor can make a profit or suffer a loss.

17. Works for more than one person or firm. An independent contractor gives his or her services to two or more unrelated persons or firms at the same time.

18. Offers services to general public. An independent contractor makes his or her services available to the general public.

19. Right to fire. Only an employer can fire an employee.

20. Right to quit. An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

**Feel free to contact us if you need further clarification to discuss your specifics.
We'd rather get it straight from the beginning than deal with the consequences.**

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