



# IRS TWENTY FACTORS OF THE COMMON LAW TEST

Mistakenly classifying an employee as an independent contractor can result in significant fines and penalties. There are 20 factors used by the IRS to determine whether you have enough control over a worker to be an employer. Though these rules are intended only as a guide—the IRS says the importance of each factor depends on the individual circumstances—they should be helpful in determining whether you wield enough control to show an employer-employee relationship. If you answer “Yes” to all of the first four questions, you’re probably dealing with an independent contractor; “Yes” to any of questions 5 through 20 means your worker is probably an employee.

<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>1. Profit or loss.</b> Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from the project? (This should involve real economic risk—not just the risk of not getting paid.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>11. Work hours.</b> Do you set the worker’s hours? (Independent contractors are masters of their own time.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>2. Investment.</b> Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>12. Full-time work.</b> Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>3. Works for more than one firm.</b> Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but isn’t conclusive since employees can also work for more than one employer.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>13. Work done on premises.</b> Must the individual work on your premises, or do you control the route or location where the work must be performed? (Answering no doesn’t by itself mean independent contractor status.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>4. Services offered to the general public.</b> Does the worker offer services to the general public?	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>14. Sequence.</b> Do you have the right to determine the order in which services are performed? (This shows control over the worker)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>5. Instructions.</b> Do you have the right to give the worker instructions about when, where, and how to work? (This shows control over the worker.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>15. Reports.</b> Must the worker give you reports accounting for his or her actions? (This may show lack of independence)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>6. Training.</b> Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>16. Pay Schedules.</b> Do you pay the worker by hour, week, or month? (Independent contractors are generally paid by the job or commission, although by industry practice, some are paid by the hour.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>7. Integration.</b> Are the worker’s services so important to your business that they have become a necessary part of the business? (This may show that the worker is subject to your control.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>17. Expenses.</b> Do you pay the worker’s business or travel costs? (This tends to show control.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>8. Services rendered personally.</b> Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, and not just the results.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>18. Tools and materials.</b> Do you provide the worker with equipment, tools, or materials? (Independent contractors generally supply the materials for the job and use their own tools and equipment.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>9. Hiring assistants.</b> Do you hire, supervise, and pay the worker’s assistants? (Independent contractors hire and pay their own staff.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>19. Right to fire.</b> Can you fire the worker? (An independent contractor can’t be fired without subjecting you to the risk of breach of contract lawsuit.)
<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>10. Continuing relationship.</b> Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)	<input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	<b>20. Worker’s right to quit.</b> Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)

Name of individual from the project who answered these questions:

Name of the Research Foundation employee who conducted the interview:

Date of interview:

Additional notes or comments that further substantiate your decision: