



Independent Contractor vs. Employee

When the IRS is reviewing the classification of an individual as an employee or independent contractor for federal employment tax purposes, common law rules (generally over the years this has been known as the “20 point common law test”) are applicable to determine whether the individual is an independent contractor or an employee. The IRS examines the relationship between the individual and the business. The evidence the IRS is looking for is the degree of control and independence in this relationship. The facts that provide this evidence fall into three categories – Behavioral Control, Financial Control, and the Relationship of the Parties.

Behavioral Control covers facts that show whether the business has a right to direct and control what work is accomplished and how the work is done, through instructions, training, or other means.

Financial Control covers facts that show whether the business has a right to direct or control the financial and business aspects of the individual's job. This includes:

- The extent to which the individual has unreimbursed business expenses
- The extent of the individual's investment in the facilities or tools used in performing services
- The extent to which the individual makes his or her services available to the relevant market
- How the business pays the individual, and
- The extent to which the individual can realize a profit or incur a loss

Relationship of the Parties covers facts that show the type of relationship the parties had. This includes:

- Written contracts describing the relationship the parties intended to create
- Whether the business provides the individual with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
- The permanency of the relationship, and
- The extent to which services performed by the individual are a key aspect of the regular business of the company

For more information, refer to [Publication 15-A](#) (PDF), (<http://www.irs.gov/pub/irs-pdf/p15a.pdf>) *Employer's Supplemental Tax Guide*, or [Publication 1779](#) (<http://www.irs.gov/pub/irs-pdf/p1779.pdf>) (PDF), *Independent Contractor or Employee*. The IRS uses [Form SS-8](#) (<http://www.irs.gov/pub/irs-pdf/fss8.pdf>) (PDF), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* to collect information on a situation.

If the relationship “qualifies” under what is known as the Section 530 safe harbor, the relationship may be considered as an independent contractor relationship even if the relationship does not the standards of an independent contractor relationship under the common law standards.