

**Independent Contractors vs. Employee Relationship**

The following is the Internal Revenue Service policy on the independent contractor versus employee relationship. Since the University must pay taxes on its employees and does not generally have to withhold or pay any taxes on payments to independent contractors, it is necessary to determine whether an individual is an employee.

**EMPLOYEE OR INDEPENDENT CONTRACTOR:**

An employer must generally withhold income taxes, withhold and pay social security taxes, and pay unemployment taxes on wages paid to an employee. An employer does not generally have to withhold or pay any taxes on payments to independent contractors.

To help you determine whether an individual is an employee under the common law rules, 20 factors have been identified that indicate whether sufficient control is present to establish an employer-employee relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. It does not matter that the employer allows the employee freedom of action, so long as the employer has the right to control both the method and the results of the services. The 20 factors indicating whether an individual is an employee or an independent contractor are:

1. **INSTRUCTIONS:** An employee is required to 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 that 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. This indicates that an employer-employee relationship exists. 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, 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 employee's business and travel expenses are paid by an employer. This shows that the employee is subject to regulation and control.
14. **TOOLS AND MATERIALS:** An employee is furnished significant tools, materials and other equipment by an employer.
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 a multiple of 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:** An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of their contract.
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 the job.

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