

A business that wants to utilize an independent contractor in lieu of an employee should attempt to have as many aspects of its relationship as possible comply with the IRS test. The following table summarizes those factors.

**Table 1.1 The IRS 20-Factor Test**

<b>FACTOR</b>	<b>EMPLOYEE STATUS</b>	<b>INDEPENDENT CONTRACTOR STATUS</b>
INSTRUCTIONS	Employer has right to direct specific actions of employee, including when and where to work	Independent contractor not required to comply with specific instructions of principal as to when, where or how to complete the task
TRAINING	An employee can be required to undergo training mandated by the employer	An independent contractor does not receive and is not required to undergo training by the principal or his agents
INTEGRATION	An employee performs his job in conjunction with other employees	An independent contractor performs his duties without significant involvement of the principal's employees
SERVICES RENDERED PERSONALLY	An employee personally renders the services for which he is employed	An independent contractor is not required to personally render the services contracted for; he may utilize his own employees or other independent contractors; he does not need permission to utilize agents in the performance of the contract
HIRING, SUPERVISING, AND PAYING ASSISTANTS	An employee is not responsible for hiring and paying his own assistants -- that is done by the employer	An independent contractor is responsible for hiring, supervising and paying his own assistants, if necessary to the performance of the contract

<b>FACTOR</b>	<b>EMPLOYEE STATUS</b>	<b>INDEPENDENT CONTRACTOR STATUS</b>
CONTINUING RELATIONSHIP	An employee has a continuing relationship with his employer	An independent contractor does not necessarily have a continuing relationship with any particular principal
SET HOURS OF WORK	An employee has his hours of work established by his employer	An independent contractor is able to control the hours he works
FULL-TIME REQUIRED	An employee is subject to the control of his employer in terms of when he works and can be limited in accepting outside employment	An independent contractor is not required to spend all of his work time performing services for the principal; he is free to work for whom and when he chooses
DOING WORK ON EMPLOYER'S PREMISES	An employee is required to perform his duties on the employer's premises; this is particularly true when work could be performed elsewhere	An independent contractor is not required to perform work at any particular location, including the principal's premises; the nature of the work may limit the choice available to an independent contractor
ORDER TO SEQUENCE SET	An employee is given a set order or sequence in which to perform certain work by his employer and is normally not allowed to select his own pattern or schedule	An independent contractor is not required to perform his services in any particular sequence; rather, he establishes his own routing and patterns for performing his services

<b>FACTOR</b>	<b>EMPLOYEE STATUS</b>	<b>INDEPENDENT CONTRACTOR STATUS</b>
ORAL OR WRITTEN REPORTS	An employee is required to submit regular reports, either oral or written, to his employer	An independent contractor is not required to report to his principal on a regular basis, although the provisions of his contract may mandate specific progress reports
PAYMENT BY HOUR, WEEK, MONTH	An employee is paid by the hour, week or month	An independent contractor is paid by the job or receives a straight commission
PAYMENT OF BUSINESS AND/OR TRAVELING EXPENSES	An employee is reimbursed for expenses, including travel, incurred in the performance of his employment duties	An independent contractor is responsible for paying all of his own expenses, including travel
FURNISHING OF TOOLS AND MATERIALS	An employee receives his tools or other materials required for work from his employer	An independent contractor furnishes his own tools or other materials
SIGNIFICANT INVESTMENT	An employee is not required to make a significant investment in order to perform his job; the place of work and necessary equipment are provided by the employer	An independent contractor makes a personal investment in his business or trade, such as the renting of an office or the purchase of equipment
REALIZATION OF PROFIT OR LOSS	An employee is paid the same amount regardless of the outcome of his work, and therefore is unable to either suffer a loss or realize a profit	An independent contractor is a business person able to realize a profit or suffer a loss as a result of performing his services for the principal(s)

<b>FACTOR</b>	<b>EMPLOYEE STATUS</b>	<b>INDEPENDENT CONTRACTOR STATUS</b>
WORKING FOR MORE THAN ONE FIRM AT A TIME	An employee normally works for only one firm or employer at a time	An independent contractor often works for more than one principal at a time
MAKING SERVICE AVAILABLE TO GENERAL PUBLIC	An employee generally does not provide services or do work for other people or firms	An independent contractor offers his services to other people or businesses
RIGHT TO DISCHARGE	An employee is subject to dismissal by an employer at any time (in the absence of an employment contract limiting the right of an employer to discharge, in which case discharge is governed by terms of the agreement)	An independent contractor cannot be "fired" so long as the independent contractor produces a result that meets the contract specifications
RIGHT TO TERMINATE	An employee is free to quit at any time without incurring liability (in the absence of a written employment contract providing otherwise)	An independent contractor may only terminate his relationship with the principal according to the terms of their contract

Under the common law, a worker is an employee when the person for whom the services are performed has the right to control and direct the individual who performs the services. The "right of control" is determined by applying the above 20-factors. This control reaches not only the result to be accomplished, but also the details and means by which that result is to be accomplished. Note that control must be present, but need not actually be exercised. Also, note that courts have held that the degree of supervision necessary to demonstrate control is only "such supervision as the nature of the work requires."

To determine whether the control test is satisfied in a particular case, the facts and circumstances must be examined. Questions about the relationship between the worker and the prospective employer are asked to ascertain control.

Also remember that the IRS will consider factors beyond the 20 specified above. The following points are also helpful when considering the use of independent contractors: