



**The Internal Revenue Service uses these common-law factors to determine whether a worker is an independent contractor or a regular employee:**

1. **Instructions.** An employer should not tell an independent contractor how to do a job.
2. **Training.** An employer should not provide substantial training for an independent contractor.
3. **Integration.** An independent contractor should not be hired to provide a service that is an essential part of an employer's business.
4. **Personal Services.** An employer should not insist that the work be performed by the contractor rather than someone that the contractor might hire.
5. **Assistants.** Independent contractors control and pay their assistants.
6. **Length of Relationship.** Independent contractors should not have a continuing relationship with an employer unless there are multiple contracts.
7. **Work Hours.** An independent contractor usually determines the hours worked to complete a job.
8. **Amount of Work.** An independent contractor should not be told to work full time for an employer if that would prevent the contractor from doing other work.
9. **Location.** Unless the services can be performed only in one location, an independent contractor chooses where to do the work.
10. **Sequence of Work.** Independent contractors determine the order in which they accomplish their tasks.
11. **Reports.** Independent contractors should not be required to produce interim reports.
12. **Payment.** Independent contractors are paid for the results of their work, not for the time worked.
13. **Expenses.** Independent contractors are responsible for their business expenses.
14. **Tools.** Independent contractors typically provide their equipment and tools.
15. **Investment.** An independent contractor has a significant investment in his business, such as a home office.
16. **Profit.** Independent contractors can realize profits and incur losses.
17. **Multiple jobs.** Independent contractors can work for more than one employer at a time.
18. **Availability.** Independent contractors make their services available to the general public.
19. **Termination.** Independent contractors cannot be fired at will, as can employees.
20. **Liability.** Independent contractors are liable for failure to complete a job.

	Yes	No
1. Is the individual's work vital to the company's core business?	<b>Employee</b> activities are integrated with the organization's business operations.	<b>IC</b> services typically are limited to non-essential business activities.
2. Did the company train the individual to perform tasks in a specific way?	<b>Employees</b> usually are taught the specific work procedures that they are expected to follow and must comply with any other employer requirements with regard to these activities.	<b>ICs</b> generally are considered "experts" in their field and, as such, can determine which work methods are most appropriate. Additionally, they typically are held accountable only for outcomes, not the means with which they are achieved.
3. Do you (or can you) instruct the individual as to when, where, and how the work is performed?		
4. Do you (or can you) control the sequence or order of the work performed?		
5. Do you (or can you) set the hours of work for the individual?	<b>Employees</b> generally work on a schedule determined by their employer.	<b>ICs</b> can work whatever hours they choose, provided that agreed-upon deadlines are met.
6. Do you (or can you) require the individual to perform the work personally?	<b>Employees</b> must do the tasks for which they were hired themselves.	<b>ICs</b> are free to delegate to their own staff or subcontract the work to others.
7. Do you (or can you) prohibit the individual from hiring, supervising, and paying assistants?		
8. Does the individual perform regular and continuous services for you?	<b>Employees</b> typically have an open-ended relationship with a company, even if the work is performed at irregular intervals.	<b>ICs</b> work on a project-by-project basis, each time with a new contract.
9. Does the individual provide services on a substantially full-time basis to your company?	<b>Employees</b> usually are expected to devote all working hours to their employer.	<b>ICs</b> do not spend so much time with any one company that they are restricted from doing projects for others and, in fact, generally work for multiple clients concurrently.
10. Is the company the sole or major source of income for the individual?		
11. Is the work performed on your premises?	<b>Employees</b> ordinarily are required to work on-site.	<b>ICs</b> are free to work off-site, such as in a home office.
12. Do you (or can you) require the individual to submit regular reports, either written or oral?	<b>Employees</b> may be asked to provide status or activity reports on a regular basis.	<b>ICs</b> are responsible for producing a final deliverable and are not, therefore, required to provide interim reports.
13. Does the company pay the individual by the hour, week, or month?	<b>Employees</b> usually are paid at fixed intervals.	<b>ICs</b> generally are paid for their results, not the amount of time worked.
14. Does the company pay	<b>Employees</b> who incur work-	<b>ICs</b> usually are expected to

the individual's travel and business expenses?	related expenses typically are reimbursed by their employer.	incorporate out-of-pocket expenses into their project fee rather than be directly reimbursed for them.
15. Are tools or equipment furnished for the individual?	<b>Employees</b> generally use company-provided supplies.	<b>ICs</b> are expected to own and use their own supplies.
16. Does the individual have a significant investment in facilities, tools or equipment?	<b>Employees</b> typically use their company's facilities, tools and equipment.	<b>ICs</b> incur expenses related to work space, equipment, etc., like any other business owner.
17. Can the individual realize a profit or loss from his or her services to the company?	<b>Employees</b> usually can expect steady paychecks	<b>ICs</b> run the risk of non-payment if a project is not completed according to the specifications detailed in the contract.
18. Does the individual make his or her services available to the general public?	<b>Employees</b> typically do not position and market themselves as service providers.	<b>ICs</b> publicize their services to a wide range of potential clients via direct mail, advertising, etc.
19. Can the individual terminate the relationship without liability?	<b>Employees</b> can quit at any time and can typically be released "at will" by their employers.	<b>ICs</b> legally are obligated to complete projects according to contract provisions and can be dismissed only if they fail to do so.
20. Does the company have the right to discharge the individual at any time?		

To streamline this analysis, the Internal Revenue Service recently used these factors to develop what is known as the three “categories of evidence” – behavioral, financial and type of relationship. While intended to assist workers in determining their own appropriate classification, employers may find IRS [Publication 1779](#) to be a useful reference in understanding these criteria. [Publication 15-A](#) is also quite valuable, especially in that it provides scenarios from a variety of industries.

But what if you're only reading this article because of an impending IRS audit? Based on the information presented here, you now believe that workers are misclassified, but it's too late to change their status now. Is there any chance of avoiding the harsh consequences?

Yes. A business may qualify for an IRS Section 530 “safe harbor” exception if it can substantiate **all three** of the following relief requirements:

1. The company had a reasonable basis for classifying the individuals as ICs. For example:
  - It relied on a relevant court case, IRS ruling or the advice of a qualified accountant or attorney;
  - The IRS did not reclassify these or similar workers during an earlier audit;
  - It is a standard industry practice to treat certain types of workers as ICs.
2. The company consistently has treated these and all similar workers as ICs in the past.
3. The company consistently has filed federal tax returns (Form 1099-Misc.) for these and all similar workers.

Going forward, there are several measures that can be taken to safeguard against allegations of misclassification:

- Consider engaging only those ICs that are incorporated and, as a result, have been assigned a federal tax ID number. By establishing a “corp-to-corp” relationship, the burden is shifted from the organization because the individual is considered an employee of his or her own corporate entity.
- Keep IC files separate from employee files. Manage IC files the same way as those of any other outside vendor.
- Require that ICs submit invoices for services rendered prior to processing payment.
- Collect documentation that supports the individual's IC status, such as business cards, yellow page listings, marketing collateral, etc.
- Refrain from asking ICs to complete standard “new hire paperwork,” such as an employment application and I-9 (immigration) form. In addition, **do not** provide them with an employee handbook.
- Avoid having ICs and W-2 employees work “side-by-side” (i.e., performing the same tasks and reporting to the same managers).
- Develop a contract that explicitly reflects the 20 factors described above, with an emphasis on the following points:
  - o The agreement is limited to a specific term or project and will not automatically “roll over.”
  - o The IC will determine how the work will be accomplished.
  - o The IC is not prohibited from providing the same or similar services to other companies during the course of the relationship.
  - o The IC is not covered by the organization's liability, health and worker compensation insurance.

