

LINDENBUSCH ACCOUNTING & TAX SERVICE, INC.  
**RIGHT-TO CONTROL TEST**

A worker is an employee for federal employment tax purposes if the worker qualifies as an employee under common law. Under common law, an employer-employee relationship exists when the firm or person for whom the worker performs the services has the right to control and direct the worker in how the worker performs the services. Right to control refers to the degree of control over the means and details of the worker's tasks. Such control is the hallmark of an employer-employee relationship. It is not necessary for the employer to actually exercise this control. Merely having the right to control the worker is sufficient to conclude that the worker is an employee and not an independent contractor.

## **20 FACTORS**

The IRS uses 20 factors to determine whether a worker is an **employee or an independent contractor**. The IRS notes that these factors are only a **guide** and that the degree of importance of each factor varies depending on the particular circumstances of each case. The following factors indicates the various aspects of a typical work relationship.

1. **Instruction.** If an employer can instruct the worker about when, where, and how the worker performs work, this indicates an employer-employee relationship. Independent contractors have more control over their work.
2. **Training and meetings.** Providing worker training and requiring the worker to attend meetings indicates the existence of an employer-employee relationship.
3. **Integration of work performed into firm operations.** Strong integration of the worker's services into operations of the person who hired the worker indicates an employer-employee relationship.
4. **Personal performance of services.** Employees must personally perform services. The same requirement might not be expected of an independent contractor, although there are exceptions. This factor alone is frequently not determinative.
5. **Personnel control.** A firm's control over the hiring, supervision, and payment of the worker's assistants suggests an employer-employee relationship. Independent contractors typically maintain and control their own staff.
6. **Length of working relationship.** A continual, long-term work relationship implies an employer-employee relationship. Such a long-term relationship may also exist with an independent contractor. Therefore, this factor taken alone is not determinative.
7. **Work schedule.** An established work schedule for the worker indicates that an employer-employee relationship exists. Independent contractors generally retain more freedom in scheduling the performance of their services to a firm.
8. **Hours of service required.** Requiring substantially full-time work from the worker in the performance of services to the firm is indicative of an employer-employee relationship. Conversely, part-time hours worked for one firm or person while the worker also provides work for other firms or persons indicate that the worker may be an independent contractor.

9. **Location of services.** Requiring the worker to perform services at the firm's or person's own location suggests an employer-employee relationship. However, because employees can only perform some types of work at the firm's or person's worksite, this factor alone is not determinative.
10. **Control over work technique.** Control by the firm or person over the worker's technique or order of tasks indicates that an employer-employee relationship exists. A worker who has control over the technique or task order in the performance of services suggests that the worker may be an independent contractor
11. **Periodic reporting.** Requiring regular written or verbal reports from the worker to other firm personnel or persons associated with the person for whom the worker provides services indicates an employer-employee relationship. However, requiring progress reports by an independent contractor is also common. Therefore, this factor alone is not determinative.
12. **Payment method.** Payment at regular intervals (hourly, weekly, or monthly) suggests an employer-employee relationship. Alternatively, payment to the worker based on the particular job or project or based on invoices issued by the worker suggests an independent contractor relationship.
13. **Work-related expenses.** Payment of the worker's business and travel expenses suggests an employer-employee relationship. However, this type of arrangement may also exist between a firm or person and an independent contractor.
14. **Provision of tools.** Tools furnished by the worker indicate that the worker is an independent contractor. If the person for whom the services are performed provides the worker with tools, this suggests the existence of an employer-employee relationship.
15. **Work facilities.** A worker who invests in and provides work facilities is likely to be an independent contractor, particularly if the facilities are of a type not generally maintained by employees. The lack of investment in facilities indicates dependence on the person for whom the services are performed to provide such facilities, which suggest an employer-employee relationship.
16. **Profit potential and risk of loss.** Workers who profit from the success of a business and bear the risk of loss from failure are more likely to be independent contractors than employees. Employers typically pay employees a fixed amount without regard to profit or losses.
17. **Providing services to multiple firms.** An employee tends to provide services to a single firm or person. In contrast, an independent contractor frequently provides services to several firms or persons.
18. **Providing service to the general public.** Workers who regularly and consistently offer their services to the public are more likely to be independent contractors.
19. **Right to discharge.** The ability of a firm or person to terminate the worker for any reason and without penalty suggests an employer-employee relationship. The presence of penalties to the firm upon termination without cause may be indicative of a higher degree of worker independence, which is more characteristic of an independent contractor relationship.
20. **Worker's right of termination.** If the worker has the ability to terminate the relationship with the firm or person at any time without penalty, this indicates an employer-employee relationship.