



W-4 or 1099, Employee or Independent Contractor

In determining a worker's status, the primary inquiry is whether the worker is an employee or an independent contractor. Below are some categories under the Common-Law Test that may be considered when determining a worker's status.

- Behavioral Control**
 Facts which illustrate whether there is a right to direct or control how the worker performs the specific task for which he or she is engaged, such as instructions and training.
- Financial Control**
 Facts which illustrate whether there is a right to direct or control how the business aspects of the worker's activities are conducted such as significant investment, unreimbursed expenses, services available to the relevant market, method of payment, and opportunity for profit or loss.
- Relationship of the Parties**
 Facts which illustrate how the parties perceive their relationship such as intent of parties/written contracts, employee benefits, discharge/termination, and regular business activity.

In general, anyone who performs services for you is your employee if you can control what will be done and how it will be done; an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what or how it will be done.

Examples of Factors When Determining Employee or Independent Contractor

	Employee	Independent Contractor
Type and Degree of Instruction	Generally subject to the business's instructions about when, where, and how the work is done. Instructions are more detailed, indicating the business has more control.	Receives minimal instruction and primarily controls when, where, and how the work is done. Instructions are less detailed, indicating the business has less control.
Evaluation System	Generally the business measures the details of how the work is performed.	Generally the business measures only the end result.
Training	Business provides training on how to do the job.	Independent Contractors use their own methods of training.
Significant Investment	Generally does not have significant investment in equipment used.	May have significant investment in equipment used.
Business Expenses	May incur unreimbursed expenses, however, not as common.	Often incurs an array of business expenses such as rent, training, advertising, licensing or professional dues, supplies, etc.
Services Available to the Market	Generally an employee does not perform duties or provide the same services to multiple businesses.	Often provides the same or similar services to more than one business. May advertise or maintain a visible business location.
Method of Payment	Compensated on an hourly, daily, weekly, or similar basis and is guaranteed a return for labor.	Typically paid by the project, however, can be paid by the hour.
Employee Benefits	Not required, but employees are often provided benefits such as insurance, paid vacation, and sick leave, etc.	Generally Independent Contractors are not provided benefits.
Permanency of Relationship	Commonly hired with expectations of an indefinite relationship. However, can be hired for a short period of time.	Commonly hired for a specific project or period of time.
Key Services Provided	Services are a part of the business's regular operations.	Services are not part of the business's regular operations.