



Additional Help



Have questions?
Contact the HR Hotline at infnow@mranet.org or 866-HR-Hotline.



Need good people?
Our recruiting services can help you find and keep the best talent.



In compliance?
From Affirmative Action to harassment prevention, we can help with compliance issues.

IRS Rules for Independent Contractors

Prior to 2006, the Internal Revenue Service (IRS) had a “Twenty Factor” test for determining whether an individual was an independent contractor or an employee. Since then, the IRS has simplified this traditional test by consolidating the 20 factors and organizing them into three categories (listed below).

To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: **Behavioral Control**, **Financial Control**, and the **Type of Relationship** of the parties.

Behavioral Control encompasses facts that show whether the business has a right to direct and control how the work is done through:

- Instructions. An employee is generally subject to the business’ instructions about when, where, and how to do the work. A key consideration is whether the business has retained the right to control the details of a worker’s performance or has given up that right.
- Training. Employees may be trained to perform services in a particular way. Independent contractors generally use their own methods.

Financial Control includes facts that show whether the business has a right to control the business aspects of the worker’s job, and include:

- The extent to which the worker has unreimbursed business expenses. Fixed ongoing costs that are incurred

regardless of whether work is currently being performed are particularly important to examine. Independent contractors bear the cost of doing business and are, therefore, more likely to have unreimbursed expenses.

- The extent of the worker's investment. An independent contractor may have a significant investment in facilities or equipment, but a significant investment is not necessary for independent contractor status.
- The extent to which a worker makes his or her services available to the relevant market. An independent contractor is free to seek out other business opportunities.
- How the worker is paid. An employee is generally guaranteed a regular wage while an independent contractor is usually paid a flat fee for the job. It is common in some professions, such a law, to pay independent contractors hourly.
- The extent to which the worker can realize a profit or loss. Independent contractors are generally more likely to make a profit or loss.



The **Type of Relationship** is shown by:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship. A relationship that is to last indefinitely is generally considered evidence of an employment relationship rather than an independent contractor relationship which usually lasts for a specific project or period.
- The extent to which services performed by the worker are a key aspect of the regular business of the company. A worker who provides services related to a key aspect of the business is more likely to be an employee, since employers usually want to direct and control the work that is key to the organization.

The IRS rules for independent contractor status are not much different from the old "Twenty Factor" test. Determination must be made on a case-by-case basis considering the particular facts and agreements of the case and consists of a weighing of the factors set out above. To further complicate matters, the Department of Labor and FLSA has its own set of factors to consider related to independent contractor status. The most heavily weighted factor in all the factors is the right to direct and control the work.

If you want the IRS to determine whether a specific individual is an independent contractor or an employee, file [Form SS-8](#) (PDF), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

Need help classifying your employees? MRA's [Compensation Services](#) department can help you!

About MRA

We help businesses thrive by creating powerful teams and safe, successful workplaces.

Founded in 1901, MRA is one of the largest employer associations and serves 3,000 employers. Our members range in size from small entrepreneurs to Fortune 50 companies and reflect the diversity of industries in Illinois, Iowa, Minnesota and Wisconsin.

Member organizations have access to expert guidance, best practices, essential tools, and dozens of services in human resources, learning and development, and productivity improvement. Member services include a 24/7 Hotline, HR resource center, affirmative action, recruiting, employee retention, reference and background investigations, organization development, roundtables, business skills, and management and leadership training.

Learn how MRA can help you develop and retain a powerful workforce. Call 800.488.4845 or visit mranet.org.

This sample document is only an example and is based on the laws in effect at the time it was written. MRA-The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation. © MRA – The Management Association, Inc.

www.mranet.org

800.488.4845

Wisconsin

N19W24400 Riverwood Drive
Waukesha, WI 53188
262.523.9090

Minnesota

9805 45th Avenue N
Plymouth, MN 55442
763.253.9100

Illinois

625 North Court, Suite 300
Palatine, IL 60067
847.963.9860

Iowa/Western Illinois

3800 Avenue of the Cities, Suite 100
Moline, IL 61265
309.764.8354