

Independent Contractor v. Employee

Common Law Test:

1. Right to control the means and manner of performance.
2. Mode of payment.
3. Furnishing of materials or tools.
4. Control of premises where work is to be done.
5. Right to discharge.

Independent Contractor = company controls only the end result.

Employee = company controls the end result and means of achieving that result.

Economic Realities Test:

Whether the worker is, as a matter of economic reality, dependent upon the prospective employer for economic opportunities.

1. Employer right to control.
2. Worker's opportunity for profit or loss from enterprise.
3. Importance of the services at issue to company's business.
4. Permanency and duration of relationship.
5. Method of payment, by time or by job.
6. Degree of specialized skill required by worker.
7. Worker's investment in equipment, materials, facilities.
8. Degree of the company control over the manner in which the work is to be performed.

Economic realities test used to determine status under minimum wage and overtime requirements of wage and hour law.

Hybrid Test:

This test is a combination of the common law and economic realities test.

Primary Condensation: Degree of control exerted by the business at issue.

Generally. Applied to employee/independent contractor issues arising under discrimination law.

IRS Test - 20 Factors:

1. Are instructions provided by hiring party?
2. Is training provided by hiring party?
3. Are workers integrated into hiring party's business operations?
4. Does the worker render his services personally?
5. Does the worker not hire, supervise or pay for assistants?
6. Is there a continuing relationship between the worker and hiring party?
7. Are the worker's working hours set by the hiring party?
8. Is full time work required?
9. Is the work performed on hiring party's premises?
10. Is the worker required to perform the services in the order set by the hiring party?
11. Does worker submit regular reports to the hiring party?
12. Is the worker paid by the hour, week or month?
13. Is the worker's business or travel expenses paid by the hiring party?
14. Are the worker's tools and materials furnished by the hiring party?
15. Does the worker have little or no investment in the equipment or facilities?
16. Does the worker suffer no profit or loss as a result of his or her services?
17. Does the worker work for only one hiring party at a time?
18. Does the worker make his services available only to the hiring party and not to the general public?
19. Does the hiring party have the right to discharge the worker?
20. Does the worker have the right to terminate the relationship?

The categories broadly are behavior control, financial control and the relationship of the parties.

Key is right to direct and control activities of the worker.