

# Employee vs. Contract Laborer

*By Lori Lemmer*

Know the key rules on worker classification. IRS and the states are clamping down on misclassified employees. Basically, what the employee vs independent contractor boils down to is who is required to pay employment/self-employment taxes and many millions of lost revenues to both state and the IRS due to the loss of payroll related expenses.

The IRS has developed various factors and tests to determine worker classification. The 3 categories are:

- Behavioral test
- Financial test
- Relationship test

Under these categories are some factors that IRS will use to determine the status.

As you look at some of these factors, you should be aware that the IRS does not look specifically at any one factor, but one factor can be enough to cause the IRS to determine that a worker is an employee. It is also important to remember that the IRS presumes that a worker is an employee unless proven otherwise.

- **Training**  
Training of a worker by an experienced employee is a factor indicating control by the employer.
- **Hours of Work**  
The establishment of set hours of work by the employer bars the worker from being a master of his own time, which is the right of the independent contractor.
- **Full-time Work**  
Full-time work required for the business indicates control by the employer since it restricts the worker from doing other gainful work.
- **Method of Payment**  
If the manner of payment is by the hour, week or month, an employer-employee relationship probably exists; whereas, payment on a commission or job basis is customary where the worker is an independent contractor.
- **Payment of Expenses**  
Payment of the worker's business expenses by the employer indicates control of the worker.
- **Tools and Materials**  
The furnishing of tools, materials, etc., by the employer, indicates control over the worker.
- **Profit or Loss**  
The possibility of a profit or loss for the worker as a result of services rendered generally shows independent contractor status.
- **Right to Quit**  
The right to quit at any time without incurring liability indicates an employer-employee relationship.

These are just a few factors to keep in mind when paying a worker. As you can see, some of these can leave a bit to interpretation. Therefore, it is important that if you have any doubt how to treat a worker, consult your tax advisor.

Thanks,

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