



IRS 20 Point Checklist for 1099 Workers

Specific factors that are used by the IRS in determining whether an individual is an employee (W-2) or an independent contractor (1099) are listed below. This listing is commonly referred to as the "20 factors" test. This 20-point checklist is only a guideline; it does not guarantee that a person is correctly classified. Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee.

1. **Must the individual take instructions from your management staff regarding when where, and how work is to be done?** A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.
2. **Does the individual receive training from your company?** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.
3. **Is the success or continuation of your business somewhat dependent on the type of service provided by the individual?** Integration of the worker's services into the business operation generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
4. **Must the individual personally perform the contracted services?** If the services must be rendered personally presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the result.
5. **Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract?** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hired supervises, and pays the other assistant pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.
6. **Is there a continuing relationship between your company and the individual?** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.
7. **Must the individual work set hours?** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.
8. **Is the individual required to work full time at your company?** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.
9. **Is the work performed on company premises?** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

10. **Is the individual required to follow a set sequence or routine in the performance of his work?** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are being performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.
11. **Must the individual give you reports regarding his/her work?** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.
12. **Is the individual paid by the hour, week, or month?** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.
13. **Do you reimburse the individual for business/travel expenses?** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.
14. **Do you supply the individual with needed tools or materials?** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.
15. **Have you made a significant investment in facilities used by the individual to perform services?** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship.
16. **Is the individual free from suffering a loss or realizing a profit based on his work?** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee.
17. **Does the individual only perform services for your company?** If a worker performs services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor.
18. **Does the individual limit the availability of his services to the general public?** The fact that a worker makes his or her services available to the general public on a regular and consistent basis +indicates an independent contractor relationship.
19. **Do you have the right to discharge the individual?** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.
20. **May the individual terminate his services at any time?** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

NOTICE: AgentHR, Inc. has provided the content of this page for general informational purposes only. You should not substitute this information for personal consultation with a qualified professional in the field, nor should you rely upon this information in taking any action. No attorney-client relationship will be created through your use of this Web site.