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## Contractor vs. Employee Designation

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Business owners must determine whether individuals providing services are employees or independent contractors. There are common law rules that govern whether a worker is an independent contractor or an employee. Generally speaking, if the employer has control over a worker, meaning the right to control what work will be done and how it will be done, that worker is an employee.

The following are the high level categories that provide evidence to determine if an individual is an employee:

1. Behavioral
  - a. Type of instruction given
  - b. Degree of instruction
  - c. Evaluation systems
  - d. Training
2. Financial
  - a. Significant investment
  - b. Unreimbursed expenses
  - c. Opportunity for profit or loss
  - d. Services available to the market
  - e. Method of payment
3. Type of Relationship
  - a. Written contracts
  - b. Employee benefits
  - c. Permanency of the relationship
  - d. Services provided as key activity of the business

The factors that qualify the worker as an employee are:

1. Instructions given to the worker
2. Employer provided training
3. Integration of the worker into business operations
4. A requirement that the worker renders services personally (instead of autonomy to contract out)

5. The worker does not have the option to hire, supervise, and pay assistants (autonomy in employing)
6. Permanence of the relationship (compared to one project or job)
7. Employer sets the hours of work
8. Employer's requirement for full-time work by the worker
9. Working on an employer's premises
10. Employer setting the order or sequence of work
11. Employer requiring reports about the work
12. Paying the worker hourly, weekly, or monthly (compared to by job)
13. Employer paying business or traveling expenses
14. Employer furnishing worker's tools and materials
15. Realization of profit or loss in the company by worker
16. Non-availability of worker's services to the general public
17. Employer's right to discharge the worker
18. Worker's right to terminate the working relationship
19. The intent of the parties to have an employer/employee relationship
20. Whether an independent contractor agreement was executed
21. Employer provided employee-type benefits
22. Employer invests in the work facilities used by the worker
23. The work is part of the employer's regular business(compared to a special project)
24. The work requires special skills(contractor)
25. The relationship that the two parties believe they are creating

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-Self-Employed-or-Employee>