**Independent Contractor versus Employee**

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| --- | --- |
| Independent Contractor | Employee |
| An Independent Contractor decides when, where, and how the work will be performed within broad guidelines. The Independent Contractor can subcontract work or parts of the project to others and can decide what tools to use and what work must be performed to complete the project. An Independent Contractor is responsible for providing all necessary tools to complete the project. | An Employee is instructed on when, where, and how the work is performed. An Employee cannot hire or subcontract others to assist with work duties. The Employer is responsible for providing the Employee with all tools, supplies, etc. needed to complete their job. |
| An Independent Contractor advertises services to the public and may provide these services to multiple entities concurrently. | An Employee might be recruited to work on a project or perform the activity and does not normally provide the services elsewhere. This would be work in addition to their normal job duties. |
| An Independent Contractor has a written contract in place prior to services being rendered. | An Employee is paid as either an exempt or non-exempt employee and never has to invest any personal monies in the success of a project; therefore, there is no risk of financial loss to the worker as a direct result of the project. |
| An Independent Contractor has liability insurance and is not covered under the employer’s workers compensation in the event of a work-related injury. | An Employee is covered under the employer’s workers compensation insurance. |
| Independent Contractor services must fall outside of the normal element of the employer’s business. | An Employee provides services that are key aspects of the regular business. |
| An Independent Contractor who quits before the end of an assignment would risk a breach of contract claim and is subject to the terms of the written contract regarding the breach. | An Employee can rightfully resign in the middle of a project, and the employer can also terminate the employee at any time according to the state applicable termination laws. |

**IRS 20-Point Checklist**

How do you determine if they should be paid as a contractor 1099 or paid on a W-2?

The IRS has established a 20-point checklist the can be used as a guideline in determining who has the "right of control." If it is concluded that the employer has the “right of control” you have a W-2 employee. If it is determined that the external party has the “right of control” you have a 1099 contractor. The greater the control exercised over the terms and conditions of employment, the greater the chance that the controlling entity will be held to be the employer.

***Remember:*** There is no one single homogenous definition of the term "employee." Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee.

*Following are the 20-points that have been established:*

1. Must the individual take instructions from your management staff regarding when, where, and how work is to be done?

2. Does the individual receive training from your company?

3. Is the success or continuation of your business somewhat dependent on the type of service provided by the individual?

4. Must the individual personally perform the contracted services?

5. Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract?

6. Is there a continuing relationship between your company and the individual?

7. Must the individual work set hours?

8. Is the individual required to work full time at your company?

9. Is the work performed on company premises?

10. Is the individual required to follow a set sequence or routine in the performance of his work?

11. Must the individual give you reports regarding his/her work?

12. Is the individual paid by the hour, week, or month?

13. Do you reimburse the individual for business/travel expenses?

14. Do you supply the individual with needed tools or materials?

15. Have you made a significant investment in facilities used by the individual to perform services?

16. Is the individual free from suffering a loss or realizing a profit based on his work?

17. Does the individual only perform services for your company?

18. Does the individual limit the availability of his services to the general public?

19. Do you have the right to discharge the individual?

20. May the individual terminate his services at any time?

***In general***, "no" answers to questions 1-16 and "yes" answers to questions 17-20 indicate an independent contractor.

Find additional information here: <https://www.irs.gov/taxtopics/tc750/tc762>

**On-Boarding a 1099 contractor versus an Employee**

On-boarding a contractor requires only a written agreement, outlining the scope of the project and the contractual payment terms.

General on-Boarding forms for an Employee are:

- I-9

- W-4 (and state withholding if applicable)

- Direct Deposit

- W-2 Consent

- Benefits package

- Employee handbook with acknowledgement of receipt