



### Topic 762 - Independent Contractor vs. Employee

To determine whether a worker is an independent contractor or an employee under common law, you must examine the relationship between the worker and the business. All evidence of control and independence in this relationship should be considered. The facts that provide this evidence fall into three categories – Behavioral Control, Financial Control, and the Relationship of the Parties.

*Behavioral Control* covers facts that show whether the business has a right to direct or control how the work is done, through instructions, training, or other means.

*Financial Control* covers facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job. This includes:

- The extent to which the worker has unreimbursed business expenses
- The extent of the worker's investment in the facilities used in performing services
- The extent to which the worker makes his or her services available to the relevant market
- How the business pays the worker, and
- The extent to which the worker can realize a profit or incur a loss

*Relationship of the Parties* covers facts that show how the parties perceive their relationship. This includes:

- Written contracts describing the relationship the parties intended to create
- The extent to which the worker is available to perform services for other, similar businesses
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
- The permanency of the relationship, and
- The extent to which services performed by the worker are a key aspect of the regular business of the company

For more information, refer to [Publication 15-A \(PDF\)](#), *Employer's Supplemental Tax Guide*, or [Publication 1779 \(PDF\)](#), *Independent Contractor or Employee*. If you want the IRS to determine whether a specific individual is an independent contractor or an employee, file [Form SS-8 \(PDF\)](#), *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*.

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