

Independent Contractor or Employee

Federal labor laws consider many criteria in deciding whether a worker is an independent contractor or an employee. The relevant criteria fall into three main categories:

- behavioral control
- financial control
- relationship of the parties

In each case it is important to consider all the criteria and facts. No single criterion provides the answer. In making a decision, the following explanations and questions should be carefully considered.

Behavioral Control

Behavioral criteria demonstrate whether there is a right to direct or control how the worker performs the work. A worker is an employee when ISU has the right to direct and control the worker. ISU may not have to actually direct or control the way the work is done, as long as ISU has the right to direct and control the work. For example:

Instructions: If the individual receives extensive instruction on the how work is to be done, this suggests the individual is an employee. Instructions can cover a wide range of topics, for example:

- How, when, or where the work is to be done.
- What tools or equipment are to be used.
- What assistants to hire.
- Where to purchase supplies and services.

If the individual receives less extensive instructions about what should be done, but not how it should be done, they may be an independent contractor.

Training: If ISU provides the individual with training on required procedures and methods, this indicates that ISU wants the work done in a certain way and suggests the individual may be an employee.

Financial Control

Financial criteria show whether there is a right to direct or control the business aspects of the work. For example:

Significant Investment: If the individual has a significant investment in the work, they may be an independent contractor. While there is no

designated dollar test, the investment must have substance. However, a significant investment is not necessary to be an independent contractor.

Expenses: If the individual is not reimbursed for some or all of the business expenses incurred, they may be an independent contractor, especially if unreimbursed business expenses are significant in relation to the total cost.

Opportunity for Profit or Loss: The fact an individual may have the potential to realize a profit or incur a loss suggests they are in business for themselves and may be an independent contractor.

Relationship of the Parties

These criteria illustrate how the University and the worker perceive their relationship. For example:

Employee Benefits: The receipt of benefits by the individual, such as insurance, pension, or paid leave, indicates an employer/employee relationship. If the individual does not receive benefits, they could be either an employee or an independent contractor.

Twenty Question Test

For the following questions, a “yes” answer is indicative of an employer/employee relationship.

1. Do you provide instructions to the worker about when, where and how he or she is to perform the work?
2. Do you provide training to the worker?
3. Are the services provided by the worker integrated into ISU’S operations?
4. Must the worker personally render the services?
5. If an assistant were to be hired for the worker, would the University hire, supervise, and pay the assistant?
6. Is there a continuing relationship between University personnel and the worker?
7. Do you set the work hours and schedule?
8. Does the worker devote substantially full time to ISU?
9. Is the work performed on University premises?
10. Is the worker required to perform the services in an order or sequence set by you?
11. Is the worker required to submit oral or written reports to you?
12. Is the worker paid by the hour, week, or month?
13. Do you have the right to discharge the worker at will?
14. Can the worker terminate his or her relationship any time he or she wishes without incurring liability to ISU? (See #10 above)
15. Do you pay the business or traveling expenses of the worker?

For the following questions, a “yes” answer is indicative of an independent contractor relationship.

16. Does the worker furnish significant tools, materials and equipment?
17. Does the worker have a significant investment in facilities?
18. Does the worker have the potential to realize a profit or loss as a result of his or her services?
19. Does the worker provide services for more than one entity or company at a time?
20. Does the worker make his or her services available to the general public?