Employee vs. Independent Contractor Classification Checklist



Here’s a checklist/questionnaire you can use to determine if your company should classify a worker as an employee or an independent contractor. If you answer “yes” to most of these questions, your worker is probably an employee rather than an independent contractor. If you have an equal number of responses in the “yes” and “no” categories, give this form to your lawyer and ask for a legal opinion as to whether the worker should be classified as an employee or independent contractor.

ISSUE	YES
Does the employer control where the work will be performed?	
Does the employer tell the worker what hours to perform the work?	
Does the employer supervise the worker or require the worker to “check-in” on a daily basis, as opposed to receiving periodic status or progress reports?	
Does the employer have the right to require the worker to redo the work if it isn’t satisfied?	
If the work must be redone, does the employer pay the related costs?	
Does the employer provide the worker with office space?	
Does the employer pay insurance premiums or payroll taxes for the worker?	
Does the employer provide fringe benefits to the worker (e.g., health insurance, vacation or sick leave, holiday pay)?	
Is the worker paid an hourly rate, as opposed to submitting an invoice for the cost of his or her services?	
Is the worker paid the same amount regardless of whether the project or the employer’s business is successful?	
Does the employer provide or pay for the tools and equipment necessary for the worker to perform the work?	
Does the employer maintain or pay to maintain the worker’s tools and equipment?	
Does the employer provide or pay for materials necessary to perform the work?	
Is the employer responsible for replacing materials that are lost or damaged?	
Is the relationship between the employer and worker a continuing one, as opposed to a relationship based on a distinct project with a foreseeable end?	
Must the worker obtain the employer’s permission to hire and pay others to do the work?	
Does the employer train the worker or others whom the worker supervises?	

ISSUE	YES
Does the employer pay for any losses, expenses, or damages incurred while the project is being completed?	
Must the worker obtain the employer’s permission to work for other individuals or organizations?	
Is the employer dependent upon the worker to continue its business?	
TOTAL (Add the total number of responses in each column)	