# Employee vs. Independent Contractor Quiz




**Is this Worker an Employee or an Independent Contractor?**

A sales representative owns her own sales agency. She spends the better part of seven years working exclusively for one client, an office furniture manufacturer, under a series of one-year contracts. Each contract specifies that the representative is not the manufacturer's employee. She's integrated into the manufacturer's operation and not allowed to sell competing products. The manufacturer ends its relationship with the agency and hires the sales representative as a full-time employee. But after only 10 months, it fires her without notice or compensation in lieu of notice. She sues for wrongful dismissal and claims notice damages based on a total of almost eight years of employment with the manufacturer. The manufacturer argues that the sales representative was an employee for only 10 months and an independent contractor the rest of the time. Consequently, it says that she's entitled to three months' notice, at most.

**Question**

**For purposes of calculating notice, was the sales representative the manufacturer's employee or an independent contractor in the seven years she worked for it on a contract basis?**

**A.** An independent contractor because she was hired through an agency.

**B.** An employee because the duration and nature of her relationship with the manufacturer was employee-like.

**C.** An independent contractor because the contract clause specifically said that the representative wasn't the manufacturer's employee.

**D.** An employee because the representative owned the agency that contracted with the manufacturer for her services.

**Answer**

**B. The representative's relationship with the manufacturer during the seven years she was hired through the agency was more like that of an employee than of an independent contractor.**

Explanation

This situation is based on an actual case from BC. After the manufacturer fired the representative, she sued for wrongful dismissal. In general, notice is based on length of employment. The longer an individual has been an employee of a company, the more notice to which she's entitled upon termination. So a major issue at the trial was whether the representative had been the manufacturer's employee for 10 months or eight years. The manufacturer argued that the seven years the sales representative worked for it through the contracts with her agency didn't count as employment because of the contract term saying she wasn't an employee and the fact that it didn't pay the representative any benefits during those years. The representative argued that those seven years counted as employment regardless of what the contract said based on the duration and permanency of the relationship, reliance, control, degree of exclusivity and the amount of energy and effort she was required to devote to the manufacturer.

A jury concluded—and the BC Court of Appeals agreed—that although she wasn't an employee in "the classic sense," the sales representative's seven years of contract work should count as employment for purposes of calculating notice. The representative had an "employee-like relationship" with the manufacturer during those years, the jury found. So her notice should be calculated based on a total of eight years of employment.

**Why Wrong Answers Are Wrong**

**A is wrong** because the fact that the representative contracted her services through an agency isn't determinative. The true relationship between the parties is a question of fact that must be determined by *all* of the circumstances of that particular situation, including—but not limited to—how the representative came to work for the manufacturer.

**C is wrong** because the contract clause isn't determinative. Although language stating that the representative isn't the manufacturer's employee is certainly relevant, it's only one of several factors to consider in determining the nature of the relationship between the representative and the manufacturer.

**D is wrong** because the fact that the representative owned the agency that contracted with the manufacturer is only marginally relevant. If the representative *is* the manufacturer's employee, it's because of the nature of the relationship between the representative and the manufacturer—not the nature of the relationship between the representative and the agency.

**Show Your Lawyer**

*Stewart v. Knoll North America Corp.*, [2007] BCCA 11, Jan. 8, 2007