

IRS Common Law Test for determination and classification as employee vs. independent contractor is organized into three major categories:

Behavioral Control: Who controls how the work is done?

BEHAVIORAL CONTROL	EMPLOYEE	INDEPENDENT CONTRACTOR
Instructions	An employer has the right to give an employee instructions regarding how, when and where the work is performed.	The client has a right to specify the parameters of the deliverables; not the details of how, when and where the work is performed.
Training	Employees are often trained to do their jobs.	Independent Contractors are hired for their expertise and should receive no internal training.

Financial Control: Who controls the business aspects of the worker's assignment?

FINANCIAL CONTROL	EMPLOYEE	INDEPENDENT CONTRACTOR
Significant Investment	Employers provide the tools and equipment necessary for their employees.	Independent Contractors provide their own tools and equipment.
Unreimbursed Expenses	Employees are reimbursed for any out-of-pocket business expenses they might incur.	Independent Contractors pay their own business expenses.
Marketing	Employees do not market their services to public.	Independent Contractors market their services to the public.
Method of Payment	Employees are paid based upon the passage of time—guaranteed return for his/her labor.	Independent Contractors are generally to be paid upon the completion of specific deliverables.
Opportunity for Profit/Loss	Employees generally have no opportunity for suffering a loss.	Independent Contractors make business decisions that allow them to not only make a profit but also have the opportunity to suffer a loss.

Relationship of Parties: Worker's and employer's/purchaser's type of relationship

RELATIONSHIP OF PARTIES	EMPLOYEE	INDEPENDENT CONTRACTOR
Intent of Parties	Expressed via employment contract; extent of direction and control the employer requires over the employee.	Expressed in a contract between the two parties; Independent Contractor expresses his/her intent by fulfilling local and state requirements for business (e.g., securing business license, etc.)
Employee Benefits	Employees are entitled to benefits such as vacation or sick time, health care benefits and ability to attend company sponsored events.	Independent Contractors provides his/her own benefits.
Termination	Within the confines of legal or contractual requirements employees can be discharged at will by the employer.	Contracts can only be terminated according to the specifications of the contract. Non-performance on the part of the contractor or client can lead to legal recourse.
Permanency of Relationship	Employer engages for indefinite period of time.	Specific services are for limited period of time.
Regular Business Activity	Employees perform services that are key aspects of employer's regular business activities.	Independent contractors perform services which do not affect client's bottom line. (limited exceptions)

DOL Economic Realities Test: Determination and classification of an employee vs. independent contractor is based on these six factors:

ECONOMIC REALITIES TEST FACTOR	EMPLOYEE	INDEPENDENT CONTRACTOR
<p>1. Whether the work is an integral part of the employer’s business. This factor is “compelling” per the DOL. Integral work includes:</p> <ul style="list-style-type: none"> • Any work that is part of the mission of the University (e.g. education, research, and health care) • Work that is already performed by University employees in the normal course of business • Work that is regular and ongoing 	<p>If the work is integral, it is more likely that the worker is economically dependent on the employer</p>	<p>If the work is not integral, it is less likely that the worker is economically dependent on the employer.</p>
<p>2. Whether the worker’s managerial skills affect the opportunity for profit or loss.</p>	<p>Worker has no opportunity to increase profit except by increasing hours.</p>	<p>Worker hires others; purchases materials and equipment for the job; advertises; rents spaces; manages timetables</p>
<p>3. The relative investment of the worker and the employer</p>	<p>Worker is economically dependent on payments from the University.</p>	<p>Worker is NOT economically dependent on payments from the University.</p>
<p>4. Whether the work performed requires special skills and initiative</p>	<p>The DOL does not consider specialized skills unless they indicate that a worker is in business for himself/herself.</p>	<p>The DOL only considers business skills, business judgment and business initiative as relevant to independent contractor status.</p>
<p>5. Whether a working relationship is permanent or indefinite</p>	<p>Permanency or indefiniteness suggests the worker is an employee.</p>	<p>Independent contractors are not permanent and should not have an indefinite term.</p>
<p>6. The nature and degree of the employer’s control</p> <ul style="list-style-type: none"> • This factor should be analyzed in light of the ultimate determination of whether the worker is economically dependent on the employer. 	<p>Controlling one’s hours, working at home, and having little supervision are common for employees.</p>	<p>An independent contractor controls meaningful aspects of the work performed, and must conduct his or her own business.</p>