



THE RESEARCH FOUNDATION
The State University of New York



Twenty Factors of the "Common Law Test"

All of the following factors *must* be considered in determining whether an employment relationship exists:

1. **Compliance with instructions.** Employees must comply with another person's instructions on when, where, and how the work is performed. In a true independent contractor relationship, the only control to which the contractor is subject is the result.
2. **Training required.** Independent contractors are not normally trained but rather are hired for their expertise in a field.
3. **Integration of services into business operations.** Employees' services are usually a vital part of the daily operation of an employer's operation.
4. **Services rendered personally.** Employees personally render the services, while contractors may delegate such work to others.
5. **Hiring, supervising, and paying assistants.** Usually individuals who perform all these functions are treated as independent contractors.
6. **Continuing relationship.** Employees are usually hired for an ongoing period, while a contractor's work ends when the job ends.
7. **Set hours of work.** Employees usually must adhere to a work schedule established by the employer.
8. **Full-time required.** Generally, employees work full-time for an employer, while independent contractors work when and for whom they choose.
9. **Performing work on the employer's premise.** Those working at the employer's site may be viewed as employees.
10. **Services performed in order or sequence set.** Persons told to perform work in a certain sequence generally are considered employees.
11. **Oral or written reports.** Employees are more likely to be required to submit regular reports to the employer.
12. **Payment by hour, week, month.** Typically, employees are paid on a regular basis, while independent contractors are compensated by the job or on a lump-sum or straight commission basis.
13. **Payment of business and/or travel expenses.** Employer payments of a person's work-related travel expenses generally indicates employee status.
14. **Furnishing of tools and materials.** Employees, not individual contractors, are generally provided with supplies.
15. **Significant investment** Individuals who have a significant personal investment in the facilities they use for work are normally independent contractors.
16. **Realization of profit or loss.** Unlike employees, independent contractors realize a profit or loss based on their

success in performing a service.

17. **Working for more than one firm at a time.** Individuals who perform services for a number of employers are usually independent contractors.
18. **Making services available to general public.** Individuals who regularly make their services available to the general public are usually treated as independent contractors.
19. **Right to discharge.** Employees can be fired, while independent contractors cannot be discharged if they fulfill contract specifications.
20. **Right to terminate relationship without incurring liability.** An employee can terminate his employment relationship with his employer at any time, whereas an independent contractor may be liable for breach of contract for leaving work unfinished.

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