

Employee or independent contractor?

Individuals who work as independent contractors are typically excluded from a state's workers' compensation program. When a conflict arises about whether a person is an employee or an independent contractor there is often a state statute that defines one, or both, terms. When the terms are not specifically or clearly defined by statute courts will apply their own test. The test may vary but many jurisdictions consider some, or all, of these factors

- the nature of the contract between the parties
- the degree of control the employer may exercise over the details of the work
- whether the one employed is engaged in a distinct occupation or business
- the kind of occupation
- whether the employer supplies the instrumentalities, tools, and place of work
- the length of time the person is engaged in the work
- the method of payment
- whether the work is part of the regular core business of the employer
- whether the parties believe they are creating the relationship of master and servant
- the right of either to terminate the relationship without liability or cause

Of these factors, none is controlling. The mere fact a worker makes his own hours, for example, does not mean he is an independent contractor. It is also not necessary that *all* of the above criteria are met. Instead, the factors should be considered, along with the circumstances, in order to conclude if the worker has the level of independence that is necessary to be classified as an independent contractor.

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