



# Topic no. 762, Independent contractor vs. employee

For federal employment tax purposes, the usual common law rules are applicable to determine if a worker is an independent contractor or an employee. Under the common law, you must examine the relationship between the worker and the business. You should consider all evidence of the degree of control and independence in this relationship. The facts that provide this evidence fall into three categories – behavioral control, financial control, and relationship of the parties.

**Behavioral control** covers facts that show if the business has a right to direct and control what work is accomplished and how the work is done, through instructions, training, or other means.

**Financial control** covers facts that show if the business has a right to direct or control the financial and business aspects of the worker's job. This includes:

- The extent to which the worker has unreimbursed business expenses
- The extent of the worker's investment in the facilities or tools used in performing services
- The extent to which the worker makes their services available to the relevant market
- How the business pays the worker, and
- The extent to which the worker can realize a profit or incur a loss

**Relationship of the parties** covers facts that show the type of relationship the parties had. This includes:

- Written contracts or oral agreements describing the relationship the parties intended to create
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
- The permanency of the relationship, and
- The extent to which services performed by the worker are a key aspect of the regular business of the company

## Additional information

For more information, refer to [Publication 15-A, Employer's Supplemental Tax Guide, Publication 1779, Independent Contractor or Employee !\[\]\(529949c2c3dadbaa4e538e8c643454bc\_img.jpg\)](#) and [Independent contractor \(self-employed\) or employee?](#) If you want the IRS to determine if a specific individual is an independent contractor or an employee, file [Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding](#). For information on eligibility for a voluntary program to reclassify your workers as employees with partial relief from federal employment taxes, see [Voluntary Classification Settlement Program \(VCSP\) Frequently Asked Questions](#).

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