

Independent Contractor Evaluation

Unfortunately there are no bright line tests. Different government agencies have slightly different tests. Other than the ABC test, all require looking at the totality of the relationship. Yes or no to any single or even most questions is not determinative. This list is a guide to assist you in making these overall evaluations. It is always safe to pay them as a W-2 employee.

Common Law Tests - Used all or in part by most states

	Yes	No	
Company has actual or right to control how worker does the job?	Emp	IC	
Distinct occupation or business?	IC	Emp	
High level of skill required?	IC	Emp	
Short length of time the services are provided?	IC	Emp	
Paid by the job/Project, not Day/Hour?	IC	Emp	
Is the work part of company's regular business?	Emp	IC	

IRS Three Factor Test -Used by the IRS

Behavioral control

	Yes	No	
•Company instructs and/or trains	Emp	IC	
•Personal service required	Emp	IC	
•Services integrated into company business	Emp	IC	
•Continuing relationship	Emp	IC	
•Work performed on company site	Emp	IC	
•Company sets hours	Emp	IC	
•Company hires assistants	Emp	IC	

Financial control

	Yes	No	
•Worker risk of profit and loss	IC	Emp	
•Worker paid by hour/day not for deliverables	Emp	IC	
•Company reimburses expenses	Emp	IC	
•Company provides tools	Emp	IC	
•Worker has significant investment in their business	IC	Emp	

Relationship of the parties

	Yes	No	
•Can company terminate worker without notice or penalty for reasons other than non-performance? ("At Will" employment)	Emp	IC	
•Can the worker terminate without notice or penalty?	Emp	IC	
•Are the services made available to more than one company and to the public?	IC	Emp	

Economic Reality Test - Used by US Dept. of Labor - Wage & Hour claims

	Yes	No	
Are the services rendered an integral part of the "employer's" business?	Emp	IC	
Is there a permanent relationship?	Emp	IC	
Does the worker have an opportunity for profit and loss?	IC	Emp	
Does the worker have an investment in facilities and equipment?	IC	Emp	

"ABC" Test - Used all or in part by some states

Presumes employee status unless the ABC Factors are true:

	Yes	No	
A: Working under contract free from employer's control	IC	Emp	
B: Service is outside employer's usual business	IC	Emp	
C: Worker is customarily engaged in an independent trade providing these services	IC	Emp	

This is an educational guide provided by The TEAM Companies. All determinations are situationally specific and are the responsibility of the user. Contact: Carl Zucker, VP Production Business Affairs with any questions: (646) 358-1408, czucker@theteamcompanies.com

