

# COMMON LAW FACTORS WITH EXAMPLES

---

Depending upon the type of business and the services performed, not all of the twenty common law factors may apply. In addition, the weight assigned to a specific factor may vary depending upon the facts of the case.

## **1. INSTRUCTIONS:**

An employee receives instructions about when, where or how the work is to be performed.

*An Independent Contractor does the job his or her own way with few, if any, instructions as to the details or methods of the work.*

## **2. TRAINING:**

Employees are often trained by a more experienced employee or are required to attend meetings or take training courses.

*An Independent Contractor uses his or her own methods and thus need not receive training from the purchaser of those services.*

## **3. INTEGRATION:**

Services of an employee are usually merged into the firm's overall operation; the firm's success depends on those services.

*An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.*

## **4. SERVICES RENDERED PERSONALLY:**

An employee's services must be rendered personally; Employees do not hire their own substitutes or delegate work to them.

*A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.*

## **5. HIRING, SUPERVISING & PAYING HELPER:**

An employee may act as a foreman for the employer but, if so, helpers are paid with the employer's funds.

*Independent Contractors select, hire, pay and supervise helpers used and are responsible for the results of the helpers' labor.*

## **6. CONTINUING RELATIONSHIP:**

An employee often continues to work for the same employer month after month or year after year.

*An Independent Contractor is usually hired to do one job of limited duration and has no expectation of continuing work.*

## **7. SET HOURS OF WORK:**

An employee may work "on call" or during hours and days as set by the employer.

*A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.*

## **8. FULL TIME REQUIRED:**

Requiring full-time service to the business, or having a priority on the worker's time, is an indicator of employment. Part-time workers are still employees if the employer has the "right to control."

*A true Independent Contractor cannot be required to devote full-time service to one firm exclusively.*

## **9. LOCATION WHERE SERVICES PERFORMED:**

Employment is indicated if the employer has the right to mandate where services are performed.

*Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.*

## **10. ORDER OR SEQUENCE SET:**

An employee performs services in the order or sequence set by the employer. This shows control by the employer.

*A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.*

If an employment relationship exists, it does not matter that the employee is called something different, such as agent, contract labor, subcontractor, or independent contractor.

## **11. ORAL OR WRITTEN REPORTS:**

An employee may be required to submit regular oral or written reports about the work in progress.

*An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress.*

## **12. PAYMENT BY THE HOUR, WEEK OR MONTH:**

An employee is typically paid by the employer in regular amounts at stated intervals, such as by the hour or week.

*An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid.*

## **13. PAYMENT OF BUSINESS & TRAVEL EXPENSE:**

An employee's business and travel expenses are either paid directly or reimbursed by the employer.

*Independent Contractors normally pay all of their own business and travel expenses without reimbursement.*

## **14. FURNISHING TOOLS & EQUIPMENT:**

Employees are furnished all necessary tools (except hand tools), materials, and equipment by their employer.

*An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.*

## **15. SIGNIFICANT INVESTMENT:**

An employee generally has little or no investment in the business. An Employee is economically dependent on the employer.

*True Independent Contractors usually have a substantial financial investment in their independent business.*

## **16. REALIZE PROFIT OR LOSS:**

An employee does not ordinarily realize a profit or loss in the business. Rather, employees are paid for services rendered.

*An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.*

## **17. WORKING FOR MORE THAN ONE FIRM AT A TIME:**

An employee ordinarily works for one employer at a time and may be prohibited from joining a competitor.

*An Independent Contractor often works for more than one client at the same time and is not subject to a non-competition rule.*

## **18. MAKING SERVICE AVAILABLE TO THE PUBLIC:**

An employee does not make his or her services available to the public except through the employer's company.

*An Independent Contractor may advertise, carry business cards, hang out a shingle, or hold a separate business license.*

## **19. RIGHT TO DISCHARGE WITHOUT LIABILITY:**

An employee can be discharged at any time without liability on the employer's part.

*If the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.*

## **20. RIGHT TO QUIT WITHOUT LIABILITY:**

An Employee may quit work at any time without liability on the employee's part.

*An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.*