



INDEPENDENT CONTRACTOR (IC) VS. EMPLOYEE (EE)

Worksheet on Employment Status

This worksheet has been adapted from the Employment Determination Guide (Form DE-38), from the Employment Development Department (EDD). Companies can obtain further assistance and information by contacting the EDD directly. Their website is www.edd.ca.gov.

Questions 1 through 3 are significant questions. If the answer to any of them is “yes,” it is a strong indication that the worker is an employee. If you answer “no” to questions 4 through 6, it shows that the worker does not have his/her own business; therefore, this factor supports employee classification as well. The answers to questions 7 through 13 are less significant, but if you answer “yes” to any of these questions, it is a sign that the worker is an employee.

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YES

NO

1. Do you instruct or supervise the person while he/she is working? Independent contractors are free to do jobs in their own way, using specific methods they choose. When a worker is required to follow company procedures and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the worker quit or be fired at any time? If you have the right to fire the worker without notice, it shows that you have the right to control the worker. Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms of the contract. They are not free to quit and walk away until the job is complete.

3. Is the work being performed part of your regular business? Work that is part of the regular business is normally performed by employees. In contrast, if the work is an extension of your business, or a special project, it might be performed by an independent contractor.

4. Does the worker have a separately established business? If the worker is operating a separately established business, it is evidence that the worker is an independent contractor. Independent contractors are free to hire employees and assign work to others in any way they choose.

5. Is the worker free to make business decisions that affect his/her ability to profit from the work? These decisions would normally involve the acquisition, use and/or disposition of equipment, facilities, and stock in trade under his/her control.

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YES

NO

6. Does the worker have a substantial investment that would subject him/her to financial risk of loss? Independent contractors furnish the tools, equipment, and supplies needed to perform the work, and normally have an investment in the items needed to complete their tasks.

7. Do you have employees who do the same type of work? If the work being done is basically the same as work done by your employees, it shows that the worker is an employee.

8. Do you furnish the tools, equipment, or supplies used to perform the work?

9. Is the work considered unskilled or semi-skilled? If the work involves unskilled or semi-skilled labor, the courts generally view these laborers as employees.

10. Do you provide training for the worker? If a company provides training, it is a sign that the worker is an employee.

11. Is the worker paid on a fixed salary, an hourly wage, or based on a project basis? Payments to independent contractors are usually made upon completion of the project or completion of the performance of specific portions of the project.

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YES

NO

12. Did the worker previously perform the same or similar services for you as an employee? If so, it is an indication that the worker is still an employee.

13. Does the worker believe that he/she is an employee? Although not controlling, the intent of the parties is a factor in determining whether a worker is an employee or independent contractor.