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Independent Contractors

Independent Contractor Definition s. 102.07(8), Wis. Stats.

Under s. 102.07(8), Wis. Stats., a person is required to meet a nine-part test before he or she is considered an independent contractor rather than an employee. A person is not an independent contractor for worker's compensation purposes just because the person says they are, or because the contractor over them says so, or because they both say so, or even if other regulators (including the federal government and other state agencies) say so.

To be considered an independent contractor and not an employee, an individual must meet and maintain **all nine** of the following conditions:

1. Maintain a separate business
2. Obtain a Federal Employer Identification number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year. (See note below)
3. Operate under specific contracts.
4. Be responsible for operating expenses under the contracts.
5. Be responsible for satisfactory performance of the work under the contracts.
6. Be paid per contract, per job, by commission or by competitive bid.
7. Be subject to profit or loss in performing the work under the contracts.
8. Have recurring business liabilities and obligations.
9. Be in a position to succeed or fail if business expense exceeds income.

Note: When requesting a Federal Employer Identification Number (FEIN) from the IRS, the independent contractor inform the IRS of the **requirement by Wisconsin Worker's Compensation law to obtain a FEIN**. A social security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07(8).

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IRS 20 RULE TEST FOR ESTABLISHING EMPLOYMENT RELATIONSHIP (EMPLOYER-EMPLOYEE VS. INDEPENDENT CONTRACTOR)

DEFINITION OF "EMPLOYEE" - An individual who performs services that are subject to the will and control of an employer--both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.

DEFINITION OF "INDEPENDENT CONTRACTOR" - An individual over whom the employer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

INSTRUCTIONS FOR APPLYING THE 20 RULE TEST - The following factors, detailed in IRS Revenue Ruling 87-41, are intended as guidelines rather than strict rules in defining the employment relationship. Check the most appropriate factor for the particular employment situation and then total the number of responses for each type of employment relationship. The closeness of most of a situation's facts to one relationship or the other will often determine what the appropriate classification should be. **If the proper relationship is unclear after analyzing these factors, the employer-employee relationship should be established.**

EMPLOYEE	CHECK ONE	INDEPENDENT CONTRACTOR
... is required to comply with instructions about when, where, and how to work. Employer's right to instruct, not the exercise of that right, is the key. Instruction may be oral or in written procedures or manuals.	 or	... is hired to provide goods or services and is not instructed in great detail about how to provide the goods or services.
... is usually trained by one of the institution's experienced employees. Training indicates that the employer wants the services performed in a certain manner.	 or	... ordinarily uses his or her own methods, is hired for his or her expertise, and receives no training from the institution that purchases services.
... renders services which are usually integrated into business operations, generally showing that direction and control are being exercised. Integration of services into the business operation occurs when the success or continuation of a business depends to an appreciable degree on the performance of services that are difficult to separate from the business operation.	 or	... renders services which can usually stand alone and are not integrated into business operations.
... is hired to render services personally. If the employer is interested in who does the job as well as in getting the job done, it indicates that the employer is concerned about the methods used as well as the results of services performed.	 or	... is hired to provide a service and often the employer does not care who performs that job.

... has little control over the hiring, supervising, and payment of assistants. Such action by an employer generally shows control over people on the job with whom assistants work.	or	... hires, supervises, and pays other workers under a contract in which he or she agrees to provide materials and labor and is responsible for the attainment of a given result.
... normally has a continuing relationship with the person for whom services are performed. Services may be continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.	or	... has a defined relationship that typically ends when the services are completed.
... has set hours or work established by the employer, indicative of control. Such a condition bars the worker from allocating time to other work, which is a right of an independent contractor.	or	... tends to establish time use as a matter of right.
... usually devotes full time to the business of the employer. Full time does not necessarily mean an eight-hour day or a five-day week. Its meaning varies depending on the intent of the parties.	or	... is free to work when, for whom, and for as many employers as desired.
... typically does his or her work on the employer's premises which implies control, especially if the work could be performed elsewhere. Someone who works in the employer's place of business is at least physically within the employees direction and supervision. However, performance of work off-site does not, of itself, mean that no right to control exists	or	... usually does work that can be completed on or off the employees premises.
... often must perform services in a prescribed sequence, which shows a level of employer control. Here, too, the right to set the sequence, not the exercise of that right, is the key.	or	... normally is free to perform services in any manner that produces desired results.
... submits or provides regular written or oral reports that indicate employer control.	or	... submits reports as specified by the contract and may provide them in the broadest of terms and with less frequency than an employee would.
.. is usually paid for work by the hour, week, or month. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.	or	... is customarily paid by the job in a lump sum or on a commission basis.
... is reimbursed or paid by the employer for business and traveling expenses, a factor that indicates control over the worker.	or	... is paid on a job basis and normally has to assume all expenses except those specified by contract.
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for business and traveling expenses, a factor that indicates control over the worker.	_____ or _____	has to assume all expenses except those specified by contract.
... usually is furnished by the employer with any tools and materials needed, which is indicative of employer control over the worker. In some jobs, employees customarily use their own hand tools.	_____ _____ or _____	... supplies the tools and equipment needed to complete the job.
... normally does not have a significant investment in the facilities used in the job.	_____ _____ or _____	... often has a significant investment in facilities used in performing services. Facilities generally include equipment or premises necessary for the work, but not such items as tools, instruments, and clothing that are provided by employees as a common practice in their trade.
... usually does not realize a profit or suffer a loss as a result of the service provided.	_____ _____ or _____	... is in a position to realize a profit or suffer a loss as a result of services provided.
... tends to work exclusively for one employer.	_____ _____ or _____	... makes services available to the general public. "Making services available" may include hanging out a shingle, holding a business license, and having advertising and telephone directory listings.
... is subject to discharge, showing that control is exercised. Limitation of the right to discharge under a collective bargaining agreement does not detract from the existence of an employer-employee relationship.	_____ _____ or _____	... cannot be fired so long as results produced measure up to contract specifications.
... has the right to end the employment relationship at any time without incurring liability.	_____ _____ or _____	... usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job
TOTAL	_____ _____ or _____	TOTAL

Source: Goldsberry, R.C.C., "Employee or Independent Contractor? Guidelines for Determining Employment Relationships," NCURA Business Officer. August 1992, pp. 23-25.

