

Employee vs. Independent Contractor:

A worker could be an Employee if they meet the following description:

The employer or supervisor of the employer has the right to control the manner and means of accomplishing the result desired.

The employer has the right to discharge the individual at will, with or without cause.

The individual has a specific title/position.

The individual works under the direction of a boss.

The individual uses company tools/apparatus,

The company sets working hours.

The individual is paid by salary or by the hour.

The work performed is part of the regular business of the principal.

The person believes he/she is an employee.

A worker could be an Independent Contractor if they meet the following description:

Responsible only for the result of the work performed.

A contract will usually determine terms of discharge.

Engaged in a distinct occupation or business

Is a specialist, does actual work without supervision.

Supplies own tools.

Has no set hours, comes and goes at will.

They are paid on a per-job basis.

Work being performed is not related to the business of the principal.

The person believes that they are an Independent Contractor and they can provide their own proof of insurance.

Employment Status

For the sole purpose of insurance premium computation, whether a person is an employee or an independent contractor shall be determined in accordance with relevant Labor Code provisions, common law and Workers' Compensation Appeals Board (WCAB) decisions.

Generally, the following factors will be considered to determine if the employment status of a person in the service of an employer is that of an employee:

1. The right to control the manor and means of accomplishing the results desired. The right to control the manor and means of accomplishing the results desired is the most important factor. If the employer has the right to exercise complete control, the relationship is one of employer-employee. The significance of the other factors will vary depending on the extent to which they evidence the right to control the manner and means by which the results desired is accomplished.
2. The right to terminate the relationship at will. The right to terminate the relationship at will, without cause, is strong evidence of the employer-employee relationship.
3. Whether the person performing the service is engaged in a distinct operation or business. If the person performing the service is engaged in a separately established business district from that of the employer, it evidences that the person is an independent contractor and not an employee. It is evidence that a business is established separately if the person operating the business holds himself out to the general public or a significant portion of the business community in some readily identifiable way, as ready to perform services similar to those performed for the employer.
4. Whether the work usually is done under the direction of the employer or by specialist without specialization. Where the work being performed is customarily subject to extensive supervision, an inference is created that the relationship is one of employer-employee.
5. The skill required in the particular occupation. Unskilled labor usually is supervised and therefore if a person is performing services which require little or no skill or experience, an inference is created that such a person is an employee.
6. Whether the employer or the person performing the service supplies the instrumentalities, tools, and the place of work. Where the tools, instrumentalities, or facilities used to accomplish the work are not significant in nature, no inference is created as respects the employment status. However, if the tools, instrumentalities and facilities are of substantial value and are provided by the employer, an inference is created that there is an employer-employee relationship

7. Whether the person performing the service has the right to hire and terminate others. If the person performing the services has the right to hire others to assist in the performance of the services for which he was hired and terminate them, an inference is created that the person is an independent contractor.
8. The length of time for which the person is to perform the services. If the length of time for which the person is to perform the services is short, a weak inference that the relationship is one of employer-independent contractor is created. However, this factor alone will rarely be sufficient to establish the employment status.
9. The method of payment, whether by time, a piece rate or the job. If payment is made by the job, there is a greater inference that the relationship is one of employer-independent contractor than if payment is based on an hourly or piece rate wage.
10. Whether the services are a part of the regular business of the employer. If the employer is in business and the services performed are a regular part of the business of the employer, an inference is created that the person performing such service is an employee.
11. Whether the parties believe they are creating the relationship of employer-employee or employer-independent contractor. The employment status that the parties believe they are creating may be evidenced by a contract, either oral or written; however, in order to determine the true employment status, such contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed.