

Independent Contractor vs Employee

There are financial benefits to both: The employer is not responsible for the usual costs associated with employees, such as unemployment, health or pension contributions and the independent contractor can deduct reasonable business expenses from tax.

Because of the financial implications, the tax man must be satisfied that the contractor is indeed self employed.

It's all about who is in control of the worker.

By definition the term "independent" signifies the absence of control by a third party - in this case, an employer.

Contractor vs Employee - The Job Itself

An employee is controlled by the company on how, when or where the work must be done. Even if the employee works completely without supervision, it does not mean that he can be classified as an independent contractor. The company still has the right to control such a worker and whether they choose to exercise that right or not does not change the status of a worker.

Conversely, an independent contractor may receive instructions on the result or end product expected (or how to improve the result) but they will self manage the how, when and where.

The fact that a worker may be supplying his own tools to perform a job does not necessarily qualify him as a contractor. It is rather the extent of the investment in tools that can be a contributing factor to be classified as a contractor.

Finances of a Contractor vs Employee

If a company controls the earnings, expenses and statutory deductions of a worker, then such a worker will be classified as an employee.

The following factors will indicate the extent to which the contractor controls his own finances:

- To what extent does the contractor have business expenses for which he is not reimbursed i.e. his own business overheads such as advertising his services, office equipment, license fees, insurance etc.
- To what extent did the contractor invest in tools or equipment to perform his services and are there maintenance costs and risk of loss associated with such tools or equipment.
- Is the contractor reliant on a single company for his income or does he perform services for a number of companies.
- Is the contractor's income based on business principles where he can realize a profit or make a loss (e.g. when a company does not pay) or is he on a guaranteed income from any one company.
- Does the contractor make his own provision for unemployment and health insurance as well as retirement or pension contributions.
- An independent contractor will typically be registered as a business for income tax purposes, submit VAT returns if applicable etc.

Relationship of the Employer to a Contractor vs Employee

- The existence of a written independent contractor agreement will establish a business relationship rather than that of an employer/employee.
- If the company provides normal employee benefits such as pension, sick leave, paid leave, bonuses etc, it will indicate an employer/employee relationship and not that normally associated with a contractor.
- If the worker is restricted from performing similar services for another company, the control by the company will be deemed that of an employer over an employee.
- If the relationship between the company and worker endures over a long period of time and especially to the exclusion of services to other companies, it will raise questions as to the status of the worker as an independent contractor.

No single factor as outlined above will define the status of an independent contractor vs employee but on balance the evidence of control and independence of the contractor can be determined.