

How to Classify a Worker – Employee or Independent Contractor?

To determine worker classification from the IRS point of view, see Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. (See the IRS's website at www.irs.gov.) Here is a summary of the SS-8 factors, gleaned mostly from court decisions.

Factors Tending to Show the Worker Is an Employee of Your Business:

- You require—or can require—the worker to comply with your instructions about when, where, and how to work.
- You train the worker to perform services in a particular manner.
- You integrate the worker's services into your business operations.
- You require the worker to render services personally; the worker can't hire others to do some of the work.
- You hire, supervise, and pay assistants for the worker.
- Your business has a continuing relationship with the worker or work is performed at frequently recurring intervals.
- You establish set hours of work.
- You require the worker to devote the majority of the work week to your business.
- You have the worker do the work on your premises.
- You require the worker to do the work in a sequence that you set.
- You require the worker to submit regular oral or written reports.
- You pay the worker by the hour, week, or month, unless these are installment payments of a lump sum agreed to for a job.
- You pay the worker's business or travel expenses.
- You furnish significant tools, equipment, and materials.
- You have the right to discharge the worker at will and the worker has the right to quit at will.

Factors Tending to Show the Worker Is an Independent Contractor

- The worker hires, supervises, and pays their assistants.
- The worker is free to work when and for whom they choose.
- The worker does the work at their own office or shop.
- The worker is paid by the job or receives a straight commission.
- The worker invests in facilities used in performing services, such as renting an office.
- The worker can realize a profit or suffer a loss from their services, such as a worker who is responsible for paying salaries to their own employees.
- The worker performs services for several businesses at one time (although sometimes a worker can be an employee of several businesses).
- The worker makes their services available to the general public.
- The worker can't be fired so long as they meet the contract specifications.

People Who Are Automatically Employees by Law

In most situations, the status of a worker is determined by the above-listed factors, however certain workers fall into special tax categories, and the usual IRS criteria don't apply. Workers who are automatically employees include:

- officers of corporations who provide service to the corporation
- food and laundry drivers
- full-time salespeople who sell goods for resale
- full-time life insurance agents working mainly for one company, and
- at-home workers who are supplied with material and given specifications for work to be performed.