

Independent Contractor

DEFINITION – A person or business retained to perform services for another under an express or implied agreement and who is not subject to the other's control, or right to control, the manner and means of performing the services. One who engages an independent contractor is not liable to others for acts or omissions of the independent contractor.

EMPLOYEE vs. INDEPENDENT CONTRACTOR

The distinctions between the two are most often relevant in the tax arena and most other areas of law adopt, in one form or the other, tax case law in their definitions.

There are a number of factors to consider when deciding whether people are employees or independent contractors. No one factor is controlling, and a designation of the relationship by the parties is also not controlling.

One of the most important considerations is the degree of control exercised by the company over the work of the workers. An employer has the right to control an employee. Thus, it is important to determine whether the company had the right to direct and control the workers not only as to the results desired, but also as to the details, manner and means by which the results were accomplished. You should ask yourself, for example, whether the company had the right to control the number and frequency of breaks, how the workers performed their work, the type of equipment they could use, and their work schedule. If you find the company had the right to supervise and control such details, and the manner and means by which the results were to be accomplished, such a finding would indicate an employer-employee relationship. On the other hand, the absence of those elements of supervision and control by the company would support a finding that the workers were independent contractors and not employees. In this regard it should be kept in mind that it is the control and not the actual exercise of control that is important.

Another factor to be considered is whether the workers were individually carrying on an independent business or whether they regularly worked in the course of the company's general business. For this purpose you may consider whether they advertised or generally offered their services to others; whether or not they as individuals, or as a group, used a business name in dealing with the company for the purpose of contracting their services; whether they listed themselves in any business capacity in city or telephone directories; whether they maintained their own offices or place of work; whether they procured necessary licenses for carrying on their activities; whether they supplied their own tools or equipment; and any other evidence tending to show that they were carrying on an independent business as individuals or as a group.

Also, an independent contractor is generally one who has the opportunity to make a profit, or the risk of taking an out-of-pocket loss, while an employee generally does not have that opportunity nor does he take that risk. Thus, an employee is generally paid on a time or piece work or commission basis, whereas an independent contractor is ordinarily paid an agreed amount, or according to an agreed formula, for a given job.

The IRS has 20 questions they use to determine the issue of *employee vs. independent contractor* and the State Compensation Insurance Fund in California has published a news article about this matter. Please make sure you research this matter or contact your attorney.

Vendor

DEFINITION – A Vendor (pronounced VEHN-duhr, from French *Vendre*, meaning to sell) is any person or company that sells goods or services to someone else in the economic production chain. Part manufacturers are vendors of parts to other manufacturers that assemble the parts into something sold to wholesalers or retailers. Retailers are vendors of products to consumers. (When you have a street fair, the people who set up booths and tables are often referred to as vendors.) In information technology as well as in other industries, the term is commonly applied to suppliers of goods and services to other companies.

Disclaimer: AMIS has only provided definitions of the words from a library and does not intend to provide any type of legal advice. We recommend that you contact an attorney for advice on these matters. We are only insurance brokers and not attorneys and we are not trying to render any legal opinions.