

Independent contractor or regular employee

[Business](#), [Human Resources](#)



1. What are factors that can determine whether an individual is considered an employee or an independent contractor? How the factors work in detail and thoroughly.

Establishing whether a member of staff is an employee or an independent contractor is significant both to the employer and the worker. This works as a guideline to the employer on how much they need to engage their workers when it comes to tax obligation linked to the pay as you go system (PAYG) that they need to impose on them (Statsky, Robert and Pamela p 63)

Statsky, Robert and Pamela (64) asserts that factors that need to be put into consideration are numerous but the main ones include, but not limited to the one summarized in the table below.

Factor

Employee

Contractor

Extent of have power over work

Employer is mandated to control and direct the employees work

Payer has no right to direct how the services contracted for are to be undertaken

Independence

Employee work as guided by the performance contract and the payer could add duties as deemed fit for their business.

Performs the work as par the contract and only provides additional services after an agreement is reached with the payer.

Payment

Based on the duration worked for and employee can still work on the rates or

commission.

Is dependent on services as per the contract.

Commercial dangers

Employer bears all the legal risks related to the work.

Bears legal risks related to the work.

Delegation capability

Does the work alone and therefore at no instance can they subcontract to another person.

Depends on the contract and therefore can or cannot contract out or assign the work.

Equipments and/or tools

Owner ensure tools are available and only when there is an agreement between the two parties.

Almost all the cases, contractors come with their tools and equipments.

2. How an agency relationship can be created? The categories of authority by which an agent can bind a principal and a third party in contract.

An agency can be created by either through authorization by appointment (express authority) or authorization by principal's conduct (apparent authority). For the case where one is created through express authority and individual is chosen to act on behalf or for another. Here, there is no specific language used and the words used are adequate to show that an individual wishes to be represented by another. Mostly the mandate is issued verbally or through resolution by the board of directors (Statsky, Robert and Pamela p 336).

On the other hand, apparent authority is where the agent has the authority

in cases when the principal, his words or conduct is rational in persuading the third party that the individual is authorized with the duty of binding the principal. Conduct that might include words that make agent not to doubt the principal agreement of them acting as an agent is enough to create an agency. The law finds the conduct of a person consenting knowingly and without objection for another person to be their agent to be an expression of authorization to the agent. This will keep away the possibility of the principal denying the fact that the agent was authorized. Always, the principal is stopped from refuting the agency thereby defending the third party who came into agreement with the agent in good faith (Statsky, Robert and Pamela p 444).

Work cited

Statsky, William P., Robert N. Diotalevi, and Pamela Linquist. *The Florida paralegal: essential rules, documents, and resources*. Clifton Park, NY: Delmar Cengage Learning, 2010.