

W-2 vs. 1099 20-Point Checklist

How do you determine if a contractor should be paid on a W-2 or a 1099?

The IRS has established a 20-point checklist they can be used as a guideline in determining whether or not a contractor can legally be paid on a 1099. This checklist helps determine who has the "right of control." Does the employer have control or the "right of control" over the individual's performance of the job and how the individual accomplishes the job? The greater the control exercised over the terms and conditions of employment, the greater the chance that the controlling entity will be held to be the employer. The right to control (not the act itself) determines the status as an independent contractor or employee. The 20-point checklist is only a guideline, it does not guarantee that a person is correctly classified. There is no one single homogenous definition of the term "employee." Most agencies and courts typically look to the totality of the circumstances and balance the factors to determine whether a worker is an employee.

Following are the 20-points that have been established:

1. Must the individual take instructions from your management staff regarding when, where, and how work is to be done?
2. Does the individual receive training from your company?
3. Is the success or continuation of your business somewhat dependent on the type of service provided by the individual?
4. Must the individual personally perform the contracted services?
5. Have you hired, supervised, or paid individuals to assist the worker in completing the project stated in the contract?
6. Is there a continuing relationship between your company and the individual?
7. Must the individual work set hours?
8. Is the individual required to work full time at your company?
9. Is the work performed on company premises?

10. Is the individual required to follow a set sequence or routine in the performance of his work?
11. Must the individual give you reports regarding his/her work?
12. Is the individual paid by the hour, week, or month?
13. Do you reimburse the individual for business/travel expenses?
14. Do you supply the individual with needed tools or materials?
15. Have you made a significant investment in facilities used by the individual to perform services?
16. Is the individual free from suffering a loss or realizing a profit based on his work?
17. Does the individual only perform services for your company?
18. Does the individual limit the availability of his services to the general public?
19. Do you have the right to discharge the individual?
20. May the individual terminate his services at any time?

In general, "no" answers to questions 1-16 and "yes" answers to questions 17-20 indicate an independent contractor. However, a simple majority of "no" answers to questions 1 to 16 and "yes" answers to questions 17 to 20 does not guarantee independent contractor treatment. Some questions are either irrelevant or of less importance because the answers may apply equally to employees and independent contractors. <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

**This checklist does not constitute legal advice. The checklist is only the opinion of the write, and not legal advice. please seek legal advice from a competent lawyer to advice you on this subject.*