

Florida Conference Treasurer's Seminar

Church Legal and Compliance Briefs:
Independent Contractors



The Very Many Tests for an Independent Contractor:

There are a large number of tests to determine the classification of a worker as employee or contractor for different purposes:

- The Economic Realities Test for Fair Labor Standards
- Department of Labor's Six Elements Test
- IRS's Control Test
- Darden Test for ADA, Title VII, and retirement Purposes
- A "Hybrid Test" used in some areas for the very same purposes
- Various state and local tests used in a variety of circumstances



They are all basically different arrangements of the 20 factors from an old Common Law test:

- Instruction Given:
 - An independent contractor (“IC”) generally does not need instructions or procedures and is not supervised.
- Training Required:
 - An IC should not need training and should already have the knowledge and experience to do the work.
- The Organization’s Operations
 - ICs do not usually do the same type of work the organization is engaged in.
- Personal Services
 - An IC typically has the ability and right to have others do the work rather than themselves.
- Hiring and Paying Assistants
 - An IC can hire, supervise, and pay their own employees and assistants.



They are all basically different arrangements of the 20 factors from the old Common Law test (2):

- Term of Relationship
 - An IC is generally hired for a specific project, not an indefinite ongoing period.
- Working Hours
 - Set working hours indicates significant control and suggests employment..
- Exclusive / Full-Time Engagement
 - An IC can work for many companies at the same time, without limitation.
- Place of Work
 - ICs can usually work from wherever they choose.
- Sequence of Tasks
 - A company typically controls the order or sequence of tasks for an employee, not a contractor.



They are all basically different arrangements of the 20 factors from the old Common Law test (3):

- Reporting Requirements
 - ICs are not generally required to regularly report progress other than infrequently or for major milestones.
- Basis of Compensation
 - ICs are frequently paid a negotiated flat fee or based on a bid rather than via regular consistent payments or wages.
- Equipment and Materials
 - An IC will usually have the equipment and materials to complete the work.
- Capacity for Profit and Loss
 - Most ICs typically bear significant exposure to both profit and loss from business fluctuation.
- Number of other Contracts
 - ICs often have many different companies they are working for.



They are all basically different arrangements of the 20 factors from the old Common Law test (4):

- Advertising Services
 - An IC will likely have business cards, letterhead, and other advertising media to solicit other work.
- Capacity to Fire
 - ICs will frequently have a contract that only provides for termination upon breach of contract.
- Capacity to Quit
 - ICs are typically required to complete the contractual obligation in full.

Candid assessment of these factors will likely produce the correct result. Trying to manipulate them to achieve a desired result will probably not.



The Potential Costs of Getting it Wrong:

- Back pay or make-up pay for minimum wage purposes, including overtime compensation.
- Retroactive employee benefits, retirement benefits, and health insurance coverage
- Disability and workman's comp benefits
- Tax and insurance obligations
- Liquidated damages (or double damages)
- Civil penalties and fines

