

Independent Contractors vs. Employees – Hawaii

The following chart compares the factors used by various federal and state agencies and bodies of law to determine if a worker is an independent contractor or an employee.

A YES answer to the following indicates that the worker is likely to be considered an EMPLOYEE:								
* Essential factor <input type="checkbox"/> Important factor X NOT a factor	FEDERAL			HAWAII				
	IRS	INS	DOL	UI	WC	TDI	Wage & Hour	Pre-Paid Health
Does the company exercise CONTROL over the manner in which the work is performed?	*	*	<input type="checkbox"/>	*1,3	*2	*	<input type="checkbox"/>	*1,3
Does the company provide instructions?	<input type="checkbox"/>							
Does the company provide orders in respect to the details of the work?				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Is training provided to the worker?	<input type="checkbox"/>							
Must the work be performed by the worker and not by an assistant?	<input type="checkbox"/>							
Is the work part of the company's primary business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Is the work done at the company's place of business?			X				X	
Are there set work hours?	<input type="checkbox"/>							
Is the relationship on a continuing basis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the company exercise any control over the worker's assistants?	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Does the company determine the location of work?	<input type="checkbox"/>	<input type="checkbox"/>						
Does the company set the order of work done?	<input type="checkbox"/>							
Does the worker have to provide interim reports?	<input type="checkbox"/>							
Is the worker paid by the hour and not by the job?	<input type="checkbox"/>	<input type="checkbox"/>	X				X	
Does the company reimburse expenses?	<input type="checkbox"/>							
Does the company provide the necessary tools?	<input type="checkbox"/>	<input type="checkbox"/>						
Can the worker be fired at will?	<input type="checkbox"/>	<input type="checkbox"/>						
Is the worker paid for partial work?	<input type="checkbox"/>							
Is the work typically supervised?		<input type="checkbox"/>						
Is there a formal employment agreement?			X				X	
Was the worker hired by the same person who hires employees at the company?	<input type="checkbox"/>							

¹ Only requires a showing of "general control", directly or indirectly, over the activities and time of the worker.

² A more significant ability to control how the work is done must exist, i.e., the employer must have the ability to dictate the means and methods by which the work is to be accomplished.

A NO answer to the following indicates that the worker is likely to be considered an EMPLOYEE:								
* Essential factor <input type="checkbox"/> Important factor X NOT a factor	FEDERAL			HAWAII				
	IRS	INS	DOL	UI	WC	TDI	Wage & Hour	Pre-Paid Health
Has the worker made a significant investment in own business?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	
Is the work performed outside of the usual course of business for the Company OR is the service performed outside of all places of business for the Company?				*3				*3
Does the worker have a business license?			X				X	
Has the company contracted with the worker to do a specific piece of work?				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Does the person have time to work for other companies?	<input type="checkbox"/>							
Does the person work for many other companies?	<input type="checkbox"/>							
Does the worker offer the services to the public?	<input type="checkbox"/>							
Can the worker make a profit or loss?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/>	
Does the person have a distinct occupation or operate a separate business?		<input type="checkbox"/>	<input type="checkbox"/>	*3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	*3
Does the work performed require skill?		<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>		
Does the worker execute the work entirely in accord with his/her own ideas or plans?				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Do both parties believe the worker is an independent contractor?		<input type="checkbox"/>						
Is much initiative, judgment, or foresight needed for the worker to succeed?			<input type="checkbox"/>				<input type="checkbox"/>	

It is important to keep in mind that simply calling someone an independent contractor and/or by providing the person with a 1099 does not ensure that the worker will meet the legal requirements.

The risks for employers who misclassify a worker as an independent contractor are significant and include back taxes, penalties, interest, unpaid personal incomes taxes of the misclassified worker, overtime, benefits, leave entitlement, and other rights and protections due to employees. This handout should serve as a generic summary of the very complex factors that various agencies use to make their determinations. There is, however, no substitute for case-specific advice regarding a particular worker. We strongly suggest that, in addition to our assistance, you seek legal counsel from an attorney experienced in this particular area of employment law, and/or a formal, written determination from the Hawaii Department of Industrial Relations and/or the IRS.

³ Under Hawaii's "ABC" Test, which applies to Employment Security Law (unemployment) and Prepaid Health Care Act, all THREE of the Essential Factors shown above must responded to correctly in order to show that the worker is an independent contractor

Vantaggio HR is a full-service human resource & management consulting firm serving companies of all sizes across the U.S.

HR & Payroll * Employment Law Compliance * Employee Handbooks * HR Hotline * Training

The information presented in this article is intended to be accurate and authoritative information on the subject matter covered at the time submitted for publishing. It is distributed with the understanding that Vantaggio HR is not rendering legal advice and assumes no liability whatsoever in connection with its use.