

Independent Contractor vs. Employee Overview

Both the federal government and state governments may have rules relating to the proper classification of a worker as either an employee or an independent contractor. Tests under the Workers' Compensation Act and Colorado Employment Security Act generally set the legal standards in Colorado.

The two main factors in the Colorado approach to independent contractor determinations are whether the individual is under the direction and control of the company, and whether the individual is customarily engaged in an independent trade, occupation, profession, or business related to the service that is performed. Colorado considers behavioral controls, financial controls and relationship between the individual and company as listed below:

Independent Contractor	Employee
Behavioral Controls	
There is no quality standard established as to how the work will be performed other than contract specifications.	Company can establish and change the quality standards through which the work can and should be done throughout the project period based on updates in job description and allow ability of other duties as assigned.
The time of performance cannot be dictated, but a mutually agreeable schedule can be established. Therefore, when they complete the detailed work of the agreement cannot be dictated so long as they complete them by the agreed upon schedule/deadlines.	Employees can be held to regular business hours of the organization as well as deadlines and schedules.
The company does not normally provide training to contractors. It is expected the contractors should have knowledge needed to do the work.	Training can and should be provided to staff to ensure knowledge is obtained and grown.
Financial Controls	
Company pays the contractors at a fixed or contracted rate, as opposed to salary or hourly.	Paid hourly or salary and not at a fixed rate.
Company does not pay business and travel expenses.	Company pays business and travel expenses
The company should not provide tools or equipment to the independent contractor.	The company provides tools and equipment to employees to be able to complete their jobs satisfactorily.
Cannot be required to work exclusively for the company, although the contractor can choose to work exclusively for the company or project for a finite period of time	Typically works exclusively for the company
Type of Relationship between the Worker and the Business	
Cannot be terminated during the contract unless the terms of the contract are violated or not met.	Employment is at will and can be terminated at any point.
Pay should be made out to a business name, not a personal name. The independent contractor's business should not be combined with the company's, and they should remain distinct and separate entities.	Employees are paid personally.
Does not receive benefits such as insurance, retirement, or Paid Time Off.	Is eligible to receive benefits such as insurance, retirement, or Paid Time Off (will have statutory benefits – workers comp, FICA, etc.).

