

# Procedures

## Independent Contractor Agreement

An independent contractor is any person or entity hired to carry out a particular job under certain specified terms. As the name suggests, independent contractors work for themselves.





An independent contractor is different from an employee who gets employed by an individual or an entity. The main difference is determined by the degree of supervision or control. While an independent contractor has autonomy in regard to how to carry out the task, employees on the other hand work under supervision.

Many businesses prefer to work with independent contractors rather than hiring employees for the following benefits they offer:



Flexibility in working hours, payment method and project-based hiring



Outsourcing benefits for non-essential tasks such as I.T. or maintenance



Relatively easier termination process

# The Agreement

It is always advisable to sign an agreement when hiring or being hired as an independent contractor. An agreement will include the



and related terms. It will ensure legal enforceability of terms for both parties.

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# Essential Ingredients

## DETAILS OF PARTIES

Include the name and address of the individuals or the business concern

## DUTIES, TERM AND COMPENSATION

This is stated right at the beginning and declares the intent of hiring an independent contractor

## DECLARATION OF ENGAGEMENT

Give a description of what the work will entail along with the terms of such work and payment arrangement

## EXPENSES

During engagement, there might be expenses incurred by the contractor, this clause includes reimbursement provisions

## REPORTS/UPDATES

If a contractor has to give updates of the work, a provision regarding progress reports or targets will be mentioned.

## INVENTIONS

If the work entails any intellectual property aspects, provisions for rights and exclusivity of such intellectual property will be mentioned

# Essential Ingredients

## CONFIDENTIALITY

If the contractor is to be privy to certain trade secrets, inventions, processes in connection with the operation of the business a non-disclosure clause will be included

## CONFLICT OF INTEREST

This clause will provide details of whether the contractor is employed with exclusivity or that she is free to enter into agreement with other clients.

## TERMINATION

This clause will contain details of notice period (if any) or any other terms for how termination is to be carried out

## DISPUTE RESOLUTION

This clause will provide for the mode of resolution such as arbitration for any dispute that arises out of any controversy between the parties

# FAQs

## 1) How does one determine if someone is an employee or an individual contractor?

A) The legal test for determining the nature of the relationship has been evolved by the Supreme Court of India. To determine whether a person was a “worker”, the proper test was to see whether or not the “employer” had control and supervision over the manner in which the work was to be done.<sup>1</sup>

The Court has also evolved the test of distinguishing a contract of service from a contract for service and the distinction will depend on the degree of control, which is crucial for determining the relationship.<sup>2</sup>

<sup>1</sup> State of Kerala v. V.M. Patel (1961) 1 LLJ 549

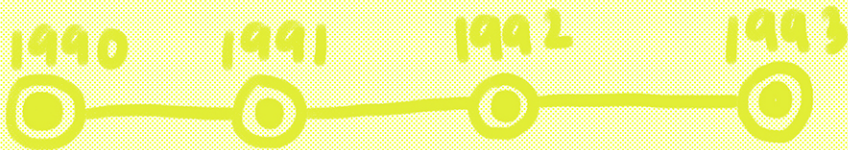
<sup>2</sup> Shivanandan Sharma v. Punjab National Bank AIR 1955 SC 404



# FAQs

## 2) How long can an independent contractor work for me?

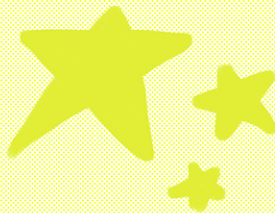
A) While there is no specific limit, a continuing relationship between the business and worker is considered an indication of an employer/employee relationship. Since the relationship can change over time, if and when contracts are renewed or extended, be sure to review whether the worker still qualifies as an independent contractor.



### **3) What are the advantages of employees over independent contractors?**

A) Employees have several welfare rights protected by the state and enforceable against the employer.

Several incentives under social welfare legislations such as the Employees Compensation Act, 1923 or the Employees' Provident Fund Scheme, 1952 are not available to independent contractors.





## FAQs

### **4) Does an independent contractor agreement have to be written on stamp paper?**

A) The Indian Registration Act, 1908, which provides for certain agreements/instruments that have to be necessarily registered. An independent contractor agreement need not be registered or even written on a stamp paper.

