

## Independent Contractors

**What the law says:** This issue is covered under Section 42(5) of the *Michigan Employment Security Act*. The law says that if a person performs service under the “direction and control” of another person, then there is an “employer-employee” relationship. Under those circumstances, the worker is “covered” by the Michigan Employment Security Act and will probably be entitled to unemployment benefits chargeable to that employer (if other eligibility factors are met).

On the other hand, if a person is an “independent contractor,” he or she will be considered to be self-employed. A self-employed person is not entitled to unemployment benefits.

**What court cases have said:** The fact that both the employer and the employee state that there is an independent contractor relationship, or the fact that there is actually a written contract, is not binding. The Unemployment Insurance Agency (UIA) must look to the “reality” of the situation and determine if the relationship is really that of independent contractor, or that of an employer-employee.

The courts have developed a test called the “economic reality test” to determine if a person is an independent contractor, or is actually an employee, even though he or she may be considered by the employer to be an independent contractor. Below are the indicators of the economic reality test. The test must result in a preponderance of evidence. No one indicator is weighed more heavily over another.

1. Whether the employer will incur liability if the relationship terminates at will;
2. Whether the work performed is an integral part of the employer’s business;
3. Whether the employee depends upon the wages for living expenses;
4. Whether the employee furnishes equipment and materials;
5. Whether the employee holds himself or herself out to the public as able to perform the same tasks;
6. Whether the work involved is customarily performed by an independent contractor;



7. The factors of control, payment of wages, maintenance of discipline, and the right to hire and fire employees;
8. Weighing those factors which will most favorably effectuate the purposes of the Michigan Employment Security Act.

Examples: A worker performs services as a painter. He/she advertises in the local newspaper in order to get jobs; maintains his/her own brushes, ladders, and dropcloths, and buys his/her own paint; and maintains his or her own business hours. He/She is paid by the job. This worker would be an independent contractor and would not be covered for unemployment benefits. The “employer”/contractor would not be taxed for the remuneration paid to the worker.

Another worker, also a painter, comes to work every day at the same company, which maintains a large office building. The company provides the paint, brushes, ladders, and other materials to do the painting. The company also sets the worker’s hours, and the worker does not do any painting work for anyone else because the job is full-time. This painter is an employee of the company. This would be true even if the company and the worker consider the worker to be an independent contractor, and even if they have a written “contract.”

**Proof at the Hearing:** The employer will have to show that, based on the economic reality test, the worker satisfies most of the criteria to be regarded as an independent contractor.

**For Further Help:** The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.