

## 3704. Existence of “Employee” Status Disputed

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*[Name of plaintiff]* must prove that *[name of agent]* was *[name of defendant]*'s employee.

In deciding whether *[name of agent]* was *[name of defendant]*'s employee, the most important factor is whether *[name of defendant]* had the right to control how *[name of agent]* performed the work, rather than just the right to specify the result. One indication of the right to control is that the hirer can discharge the worker [without cause]. It does not matter whether *[name of defendant]* exercised the right to control.

In deciding whether *[name of defendant]* was *[name of agent]*'s employer, in addition to the right of control, you must consider the full nature of their relationship. You should take into account the following additional factors, which, if true, may show that *[name of defendant]* was the employer of *[name of agent]*. No one factor is necessarily decisive. Do not simply count the number of applicable factors and use the larger number to make your decision. It is for you to determine the weight and importance to give to each of these additional factors based on all of the evidence.

- (a) *[Name of defendant]* supplied the equipment, tools, and place of work;
- (b) *[Name of agent]* was paid by the hour rather than by the job;
- (c) *[Name of defendant]* was in business;
- (d) The work being done by *[name of agent]* was part of the regular business of *[name of defendant]*;
- (e) *[Name of agent]* was not engaged in a distinct occupation or business;
- (f) The kind of work performed by *[name of agent]* is usually done under the direction of a supervisor rather than by a specialist working without supervision;
- (g) The kind of work performed by *[name of agent]* does not require specialized or professional skill;
- (h) The services performed by *[name of agent]* were to be performed over a long period of time; [and]
- (i) *[Name of defendant]* and *[name of agent]* believed that they had an employer-employee relationship[./; and]
- (j) *[Specify other factor]*.