



## 1099 vs W2

The IRS used to have a 20 question checklist. Now they have a 3 pronged approach.  
[You can check it out on their page here.](#)

Behavioral, including:

Types on instruction (i.e. when & where to do the work, if there are parameters = employee)

Degree of instruction (i.e. more instruction, like supervision & consultation = employee)

Evaluation Systems (i.e. how work is performed= employee, if it was performed= contractor)

Training (i.e. any training on how to do job, notes, etc= employee)

Financial Control, including:

Significant investment (buying computer for work= contractor)

Unreimbursed expenses (contractors more likely to have these)

Opportunity for profit & loss (more likely to be contractor)

Services Available on the Market (a direct quote from IRS website: "An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.")

Method of payment (hourly payment is usually for employees, contractors get paid by job completed)

Type of Relationship, including

Written contract (can be either)

Employee Benefits (typically for employees)

Permanency of Relationship (another direct quote: "If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship")

Services Provided as a Key Activity of the Business (employee. For instance, in a counseling practice, counseling is a key activity so should be an employee. Website design isn't so that designer can be a contractor.)

Looking at the IRS' determinants of employee vs contractor makes it hard to argue that a contractor is an appropriate designation in a group counseling practice.

\*steps off soapbox\*