

IRS Evaluation

Employee vs. Independent Contractor

<i>(A) Behavioral Control Factors</i>	<i>EMPLOYEE</i>	<i>INDEPENDENT CONTRACTOR</i>	<i>TNC DRIVERS</i>
<i>Type of Instructions Given</i>	Employees must follow the instructions of the employer as to when, where, and how to perform the work.	Independent contractors can set their own hours and decide how to perform the job or complete the project. The company will review the finished project.	Drivers choose when to work and whom to pick-up. There are no set hours in which to work nor quotas to meet.
<i>Degree of Instruction</i>	Degree of Instruction means that the more detailed the instructions, the more control the business exercises over the worker and the closer the worker is to an employee.	Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.	Drivers are required to: be over 21 with an active U.S. driver's license for at least 1 year, pass a driving record and background check, meet TNC and local governments' vehicle standards, have a license, valid plates, insurance in driver's name, and a current smart phone. Drivers must have signage on car when driving.
<i>Evaluation</i>	If an evaluation system measures the details of how the work is performed, then these factors would indicate that you are an employee.	If the evaluation system measures just the end result, then you could be either an independent contractor or an employee.	Evaluations are based on quality of service at the time of completion of ride and evaluations are made by customer not employer.
<i>Training</i>	The employer may hold classes, meetings or closely supervise on-the-job to train employees.	Independent contractors can perform the work as they choose.	Some TNCs include a mentor training before becoming a driver. This includes advice on maximizing services and efficiency. Additional training is typically only when a driver is showing lower than acceptable reviews.

<i>(B) Financial Control Factors</i>	<i>EMPLOYEE</i>	<i>INDEPENDENT CONTRACTOR</i>	<i>TNC DRIVERS</i>
<i>Significant Investment</i>	Employees do not invest in the facility and do not buy equipment.	Independent contractors must invest in their own workplace and equipment.	Drivers provide their own vehicle, insurance, gas, and mobile device. TNC provides additional insurance in the event of an accident.
<i>Unreimbursed Expenses</i>		Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.	Drivers are responsible for car payments, gas, insurance, and cleanings. Some insurance TNC riders are flat rate and some are variable rate based on when the vehicle is being used for TNC purposes.
<i>Opportunity for Profit or Loss</i>	The profit or loss of the company does not change the pay that employees earn.	Independent contractors can profit or lose money based on good or bad results and time spent working on the project.	Payment is based on rate at time of the ride, length of ride, and tips from the customer. Payment is not dependent on the profit or loss of the company.
<i>Services Available to the Market</i>	Employees generally serve one employer.	Independent contractors can provide services to the general public, advertise services, and recruit new customers--all while working for one or more other companies.	Drivers may drive for multiple TNC companies. Many of drivers have other jobs.
<i>Method of Payment</i>	Employees are paid on specific dates in regular amounts, and may be reimbursed for travel and business expenses.	The contract between the company and the independent contractor determines how payment is to be made. Independent contractors may include expenses as part of the contract, or may pay expenses independently.	Payments based on services rendered and not a flat rate salary.

<i>(C) Type of Relationship Factors:</i>	<i>EMPLOYEE</i>	<i>INDEPENDENT CONTRACTOR</i>	<i>TNC DRIVERS</i>
<i>Written Contract</i>	A contract that states that the worker is an employee is not sufficient to determine the worker’s status. How the parties work together determines whether the worker is an employee.	A contract that states that the worker is an independent contractor is not sufficient to determine the worker’s status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his own self-employment tax. How the parties work together determines whether the worker is an independent contractor.	Some TNCs expressly define drivers as “contractors” in the partner agreement.
<i>Employee Benefits</i>	Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance.	Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.	TNCs may offer discounts on drivers insurance or gas.
<i>Permanency of the Relationship</i>	Employees have an ongoing relationship with the employer.	Independent contractors are hired for a specific job. When that job is finished, the work relationship ends.	Drivers are only working when the TNC app is set to the driver mode.
<i>Services Provided as Key Activity of the Business</i>	If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities.		Drivers are given equal treatment. However those with higher ratings made receive priority in being selected for a ride offering.