**64:06:02:07.01.  Independent contractors.** The prime factor in distinguishing an employee from an independent contractor is the degree of control exercised by the employer. Other criteria which may be used to determine whether a person is an employee or an independent contractor are as follows:

(1)  An employee is in the service of another, under an express or implied contract, and the employee's work is controlled by the employer, while an independent contractor is controlled by the person hiring the contractor only as to the results of the work;

(2)  An independent contractor exercises rights or control over the worksite;

(3)  An independent contractor may hire other workers over whom the contractor has control in matters such as hiring, firing, salary, and place and manner of work;

(4)  An employee uses the equipment or material of the employer in a manner prescribed by the employer, while the independent contractor provides the labor, material, and means for accomplishing the work;

(5)  An employee is generally paid an hourly rate or a monthly or annual salary, while the independent contractor is paid a specific amount for the work completed; and

(6)  An independent contractor generally pays the contractor's own workers.

All of these factors are considered in determining whether a person is an independent contractor, but each case depends upon its own facts with the right to control being the most important criterion.

**Source:** 16 SDR 76, effective November 1, 1989; 21 SDR 219, effective July 1, 1995.

**General Authority:** SDCL 10-45-47.1, 10-46-35.1.

**Law Implemented:** SDCL 10-45-25, 10-46-2.1.