

Comparison of Brokerage Practices

Employee, Common-Law, and Statutory Independent Contractor Classifications

PRACTICE	EMPLOYEE	COMMON-LAW INDEPENDENT CONTRACTOR	STATUTORY INDEPENDENT CONTRACTOR
1. Training and education can be required.	Yes	No	Yes
2. Business forms can be required.	Yes	Yes	Yes
3. Minimum earnings can be required.	Yes	No	Yes
4. Office manuals can be required.	Yes	No*	Yes
5. Sales meetings can be required.	Yes	No	Yes
6. Managerial positions are OK.	Yes	No	Yes
7. Territorial assignments are OK.	Yes	No	Yes
8. Immediate termination is OK.	Yes	No	Yes
9. Work other than sales is OK.	Yes	No	Yes
10. Payment of business cards by broker is OK.	Yes	No	No
11. Office space provided by broker is OK.	Yes	Yes	Yes
12. Secretarial help provided by broker is OK.	Yes	No	Yes
13. Auto and auto insurance provided by broker is OK.	Yes	No	No
14. Floor time can be required.	Yes	No	Yes
15. Number of hours worked/overtime can be required.	Yes	No	Yes
16. Paid by salary.	Yes	No	Yes**
17. Commissions.	Yes	Yes	Yes
18. Bonuses, overrides, etc.	Yes	No	Yes**
19. Draws are OK.	Yes	No	No
20. Broker may pay for E&O insurance.	Yes	Yes	Yes
21. Broker may pay for real estate license fee.	Yes	No	No
22. Broker may pay REALTOR® dues.	Yes	No	No

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*(with exceptions). Office manuals may be supplied to all salespeople, and *employees* may be required to observe the office policies and procedures outlined in the manual. *Statutory independent contractors* also can be required to adhere to all policies and procedures set forth in the manual. The *common-law independent contractor* may be required to follow the manual to the extent it sets forth the procedures or requirements that the broker and his or her organization are legally obligated to follow. However, it should be made clear that when the manual sets forth detailed rules of conduct, it constitutes only guidance to the *common-law independent contractor*.

**if based on sales performance (the total of these amounts may not exceed 10% of the salesperson's total annual income for real estate sales).

Reference: National Association of REALTORS®. *Real Estate Brokerage Essentials®: Navigating Legal Risks and Managing a Successful Brokerage*. 4th Edition. 2016.