

Guide to Financial Operations

Chapter XII, Section 6.I – Paying a Non-State Employee

ATTACHMENT A

IRS Guidelines for Determining Worker Status

The IRS measures the degree of control vs. independence to determine the status of a worker. Facts that provide evidence of the degree of control and independence fall into three categories: Behavioral Control, Financial Control, and Relationship of the Parties.

BEHAVIORAL CONTROL:

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the agency has the right to direct and control the worker. The agency does not have to actually direct or control the way the work is done – as long as the agency has the right to direct and control the work. For example:

Instructions – if the worker receives extensive instructions on how work is to be done, this suggests that the worker is an employee. Instructions can cover a wide range of topics, for example:

- how, when, or where to do the work
- what tools or equipment to use
- what assistants to hire to help with the work
- where to purchase supplies and services

If the worker receives less extensive instructions about what should be done, and few instructions on how it should be done, the worker may be an **independent contractor**. Instructions about time and place may be less important than directions on how the work is performed.

Training – if the agency provides the worker with training about required procedures and methods, this indicates that the agency wants the work done in a certain way, and this suggests that the worker may be an **employee**.

FINANCIAL CONTROL:

These facts show whether there is a right to direct or control the business part of the work. For example:

Significant Investment – if the worker has a significant economic investment in his or her work, such as a significant investment in equipment, the worker may be an **independent contractor**. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **independent contractor**.

Expenses – if the worker is not reimbursed for some or all business expenses, then he or she may be an **independent contractor**, especially if his or her unreimbursed business expenses are high.

Opportunity for Profit or Loss – if the worker can realize a profit or incur a loss, this suggests that he or she is in business for himself or herself and that the worker may be an **independent contractor**.

Corporate Form – if the worker has created a corporation through which he or she performs services, and corporate formalities are observed (such as formal organization under state law, the holding of regular shareholder and board of directors meetings, the filing of tax returns reflecting corporate status, and the like), this is an indication that the worker may be an employee of the corporation, and that the corporation may be an independent contractor with respect to the agency for which services are performed. In this type of situation, agencies should make a worker status determination and document the results of that process.

No worker status determinations are necessary when a State agency has contracted with an employment agency, or engaged the services of a firm in the business of providing consulting services.

The degree of a worker's investment and risk as well as the ability/freedom to make his or her skills available to the relevant market are factors that measure Financial Control. An independent contractor will generally:

- Select, hire and compensate workers to assist in the task
- Offer his or her services to the general public
- Be paid by the job/task, rather than receive a wage or salary

RELATIONSHIP OF THE PARTIES:

These are facts that illustrate how the agency and the worker perceive their relationship. For example:

Employee Benefits – if the worker receives benefits, such as insurance, pension, or paid leave, this is an indication that the worker may be an **employee**. If the worker does not receive benefits, however, he or she could be either an **employee** or an **independent contractor**.

Written Contracts – a written contract may show what both the worker and the agency intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.

The permanence and interdependency of the worker/agency relationship is used to evaluate this component. The type of relationship is characterized by:

- The extent to which services performed are a key aspect of the regular business of the agency
- The ability of the worker to quit or be terminated at any time without penalty
- Whether the agency provides the worker with benefits
- The permanency of the relationship

No fact by itself is decisive, and all facts must be considered in making a determination.