

EMPLOYEE OR INDEPENDENT CONTRACTOR?

By Holly Collins

As the days get longer and hints of warmer weather begin to dot the forecast, local governments generally start thinking about summer recreation activities (sports, youth camps, swimming, etc.). With these activities often comes the need for additional workers. How will you treat payments to these workers for their services?

Generally, if the worker is an **employee**, the local government must withhold and pay Social Security, Medicare, and unemployment taxes, and issue a W-2 to the employee after the end of each calendar year. An **independent contractor** is responsible for payment of Medicare and Social Security taxes, and receives a 1099 (Miscellaneous Income) tax statement from the local government. **Do you know if your workers are employees or independent contractors?**

Based on prior cases and rulings, the Internal Revenue Service (IRS) has identified twenty (20) factors to examine when determining whether an individual is an employee or an independent contractor.

1. Instructions – If the local government for which the services are performed has the right to require compliance with instructions, this indicates employee status.
2. Training - Training a worker indicates that the local government wants the services performed in a certain manner (which indicates employee status).
3. Integration – Integration of the worker's services into the business operations generally shows that the worker is an employee.
4. Services Rendered Personally – If the services are required to be performed personally, this is an indication that the local government is interested in how the work is performed, which indicates employee status. An employee does not have the right to hire others to do the work.
5. Hiring, Supervising, and Paying Assistants – If the local government hires, supervises, and pays assistants to help the worker, this generally shows control over the worker and indicates employee status. An independent contractor must have the authority to control their own assistance.

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Our Resources

As always, we are available as a resource to you as questions arise. We are in this together as both auditor and auditee will have to keep up with evolving and fluid guidance from the Federal and State governments.

Please contact any of our governmental partners and managers, at 1-800-277-0050 for assistance.

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6. Continuing Relationship – A continuing relationship, and therefore an employee- employer relationship, exists when work is performed at frequently recurring, although irregular intervals.
7. Set Hours of Work – The establishment of set hours of work by the local government indicates employee status.
8. Full Time Required – If the worker must devote substantially full time to the business of the local government, this indicates employee status. An independent contractor is free to work when and for whom he or she chooses.
9. Doing Work on Employer's Premises – If the work is performed on the premises of the local government or if the local government mandates the worker to travel to a designated location for the job, this indicates employee status, especially if the work could be done elsewhere.
10. Order or Sequence Set – If a worker must perform the services in the order or sequence set by the local government, this shows that the worker is not free to follow his or her own pattern of work, and indicates employee status.
11. Oral or Written Reports – A requirement that the worker submit regular reports to the local government indicates employee status.
12. Payment by the Hour, Week, or Month – Payment by the hour, week or month generally points to employment status; payment by the job or a commission indicates independent contractor status.
13. Payment of Business and/or Traveling Expenses – If the local government pays the worker's business or travel expenses, this indicates employee status.
14. Furnishing of Tools and Materials – Furnishing of tools, materials, uniforms or other equipment by the local government indicates employee status.
15. Significant Investment – A worker's investment in the facilities he or she uses indicates independent contractor status.
16. Realization of Profit or Loss – A worker who can realize a profit or suffer a loss as a result of the services (in addition to profit or loss ordinarily realized by employees) is generally an independent contractor.
17. Working For More Than One Firm At A Time – If a worker performs more than de minimus services for multiple entities at the same time, this generally indicates independent contractor status.
18. Making Services Available to the General Public – If a worker makes his or her services available to the public on a regular and consistent basis, this indicates independent contractor status.

19. Right to Discharge – The right to discharge a worker is a factor indicating that the worker is an employee.
20. Right to Terminate – An employer-employee relationship exists if the worker has a right to end his/her relationship with the local government at any time, without incurring liability.

There is no set number or sequence of the above factors that dictates whether the worker is an employee or independent contractor. Additionally, the degree of importance of each factor varies depending on the occupation. Each situation should be evaluated on a case by case basis. Factors that are relevant in one situation may be irrelevant in another.

If your local government is still unclear as to whether a worker is an employee or an independent contractor, the IRS recommends filing Form SS-8 with the IRS. The form can be filed by either the worker or the entity. The IRS will review the facts submitted on the form and officially determine the worker's status. However, this process could take up to six (6) months, but is worth it if the entity continually hires the same types of workers (i.e. summer recreation instructors).

Mauldin & Jenkins will be attending the following Governmental Conventions. Please stop by our booth if you are also planning to attend.

ACCG Convention– April 30-May 1, 2011 Savannah, GA Booth 41

G..A.I.N.S. Convention– May 5-6, 2011 Savannah, GA

GMA Convention– June 25-26, 2011 Savannah, GA Booth 826

GGFOA Convention– October 2-5, 2011 Savannah, GA

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