

INSTRUCTIONS FOR PREPARING THE PERSONAL SERVICES CLASSIFICATION ANALYSIS

Employee vs. Individual Independent Contractor Status

Questions A and B: If question A or B is answered yes, the individual is an employee and payment must be made through the **Human Resources** department.

The following definitions are taken from the Social Security Administration internal procedures manual and are intended to be used as guidelines in preparing the Personal Services Classification Analysis. Please refer to the corresponding numbers on the attached questionnaire (Attachment A):

1. **Instructions:** There is a control factor present indicating an employee relationship if the person or persons for whom the services are performed have the right to require compliance with instructions. These instructions may be manuals or written procedures that show how the desired result is to be accomplished. Negotiated time for all participants to meet does NOT constitute instructions.
2. **Training:** Training of a worker by an experienced employee working with him or her, by correspondence, by required attendance at meetings and by other methods is a factor of control because it is an indication that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent contractor uses his or her own methods and receives no training from the purchaser of the services. It is usually the methods of the independent contractor that bring him or her to the attention of the purchaser.
3. **Integration:** A worker whose services are an integral part of the business of the individual or firm that employs him or her is usually subject to direction and control. To determine whether integration exists, determine the scope and function of the business and then determine whether the services of the individual are merged into it. When the success or continuation of a business depends to an appreciable degree upon the performance of certain kinds of services, the workers who perform these services must necessarily be subject to a certain amount of control. The direction and control would indicate an employee relationship.
4. **Services Rendered Personally:** If the worker is required to do the work personally, it is an element of control because it indicates that the employer is interested in the methods as well as the results. The employer is interested not only in getting a desired result but also in who does the job. Lack of control may be indicated when the worker has the right to hire a substitute without the permission or knowledge of the employer.
5. **Hiring, Supervising, Paying Assistants:** Where the employer hires, supervises and pays other workers on the same job, he or she usually exercises control over all the workers on the job. Sometimes it is the worker who hires, supervises and pays the other workers. This is usually as a result of a contract in which the worker agrees to provide materials and labor and is responsible only for the attainment of a result. This indicates an independent contractor. On the other hand, if the worker does so at the direction of the employer, he or she may be acting as an employee in the capacity of a supervisor or as a representative of the employer.
6. **Continuing Relationship:** A worker who has a continuing relationship with the employer is more likely to be an employee than one who is engaged for a single job or for sporadic or infrequent jobs. If the arrangement contemplates continuing or frequently recurring work (even on irregular intervals), the relationship is considered permanent even if the services are part-time, seasonal or of short duration.
7. **Set Hours of Work:** A worker whose hours of work are set by the employer is usually an employee. The condition prevents the worker from being master of his or her own time, which is the right of the independent contractor. Set hours do NOT include the time of the performance but refer to preparation time.

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8. **Full-time Required:** A requirement that a worker devote his or her full time to the business of the employer implies control by the employer. It gives the employer control over the amount of time the worker spends working and restricts him or her from doing other gainful work. An independent contractor, on the other hand, is free to work when, and for whom, he or she chooses.
9. **Doing Work on the Districts Premises:** The fact that the worker does the work on an employer's premises is not control in itself; however, it does imply that the employer has control especially where the work is of such a nature that it could be done elsewhere. The use of desk space and telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision.
10. **Order or Sequence Set:** If a person must perform certain tasks at certain times, he or she is not free to follow his or her own pattern of work. If the employer does not set the order of the services but retains the right to do so, he or she can still be considered to have control.
11. **Oral or Written Reports:** A requirement that regular oral or written reports should be submitted to the employer is an element of control. It shows that the worker is compelled to account for his or her actions.
12. **Payment by Hour, Week or Month:** Payment by the job generally indicates a consulting relationship, even if based on the number of hours worked at a fixed rate per hour. Paying a worker regular amounts at stated intervals strongly indicates an employer-employee relationship.
13. **Payment of Business and/or Travel Expense:** An independent contractor is paid on a job basis and he or she takes care of all incidental expenses. Payment or reimbursement of business or travel expenses would indicate an employee relationship.
14. **Furnishing Tools and Materials:** The fact that an employer furnishes tools and materials tends to show the existence of an employee relationship because the employer can determine which tools are used, and to some extent the order and how they will be used. An independent contractor ordinarily furnishes his or her own tools.
15. **Right to Discharge:** An independent contractor cannot be fired except under the terms of the contractual termination clause.
16. **Right to Terminate:** An employee has the right to end his or her relationship with an employer at any time without incurring liability. An independent contractor works pursuant to the terms of the applicable contract and may be legally obligated to make good for failure to provide the services contracted for.
17. **Significant Investment:** Investment in facilities such as equipment, premises, office furniture and machinery, indicates independence from the employer and, therefore a consultant relationship.
18. **Realization of Profit or Loss:** An independent contractor can generally realize a profit or suffer a loss as a result of his or her services, but an employee cannot. For example, a consultant's services establish or affect the consultant's reputation and not the reputation of those who purchase the services. A negative answer to this question will result in the person being classified as an employee.
19. **Working for More Than One Firm at a Time:** A person who works for a number of firms at one time is generally an independent contractor. His or her connection with a number of firms keeps him or her free from the control of any one firm. Working only for the District would indicate an employee relationship. A negative answer to this question will result in the person being classified as an employee.

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20. **Making Services Available to the General Public:** A person who makes his or her services available to the general public is usually an independent contractor. This can be accomplished in a number of ways: a worker may have an office and assistants, may hang out a “shingle”, may hold business licenses, may be listed in business or telephone directories or may advertise in newspapers, trade journals or magazines. A negative answer to this question will result in the person being classified as an employee.

These are general guidelines intended to aid in classifying workers as employees or independent contractors and are not intended to compel a particular conclusion. The weight given to these factors is not always constant. Their degree of importance may vary somewhat depending on the occupation being considered and the reasons for their existence. Some of them do not apply to particular occupations. Judgment and discretion must be used in applying these guidelines. If the classification analysis indicates an independent contractor relationship but the Independent Contractor Agreement indicates an employee relationship, the individual will be considered an employee and must be paid through the **Human Resources department**.

See following pages for the Personal Services Classification Analysis form.

Independent Contractor Agreement for Individuals

Personal Services Classification Analysis

Responses to the following questions will assist in determining whether the individual should be classified as an employee or independent contractor. Payments to employees are subject to withholding tax for which the District can be held liable if it fails to collect. Payments to individuals who are independent contractors are subject to IRS reporting on Form 1099 and to self-employment tax.

If question A or question B is answered "Yes", the individual is an employee and the person certifying the status need not complete the rest of this form. Affirmative answers to questions #1 through #16 and negative answers to questions #17 through #20 indicate an employee relationship. No one question is necessarily controlling.

This questionnaire must be completed and attached to the Independent Contractor Agreement.

INDIVIDUAL NAME: _____

- | | YES | NO | N/A |
|---|-----|----|-----|
| A. Does the District pay as employees others who perform essentially the same duties that are to be performed by this individual? | | | |
| B. Has this individual previously been paid as an employee to perform essentially these same tasks? | | | |
| 1. Instruction - Does the District have the right to require compliance with instruction about when, where, and how the individual is to work? | | | |
| 2. Training - Will the individual be trained in the job by working with an experienced District employee, by required attendance at meetings, seminars, etc.? | | | |
| 3. Integration - Is the success or continued operation of the Department dependent to an appreciable degree upon the services performed by this individual? | | | |
| 4. Services rendered personally - Does the District control the selection of the person who will perform the work? | | | |
| 5. Hiring, supervising, paying assistants - Does the District pay or otherwise control the activities of the workers who assist this person in the performance of his or her duties? | | | |
| 6. Continuing relationship - Does the arrangement with this individual establish continuing or recurring work, even if the services are seasonal, part-time, or of short duration? | | | |
| 7. Set hours of work - Does the District establish the hours of work or otherwise prevent the individual from being the "master of his or her own time"? | | | |
| 8. Full-time required - Does the District have control over the amount of time this person spends working so as to restrict him/her from other gainful work? | | | |

Independent Contractor Agreement for Individuals
Personal Services Classification Analysis

- | | | YES | NO | N/A |
|-----|---|-----|----|-----|
| 9. | Doing work on District premises - Does the District have the right to designate the place the work will be performed? | | | |
| 10. | Order or sequence set - Does the District have the right to require the work be performed in a particular order or sequence? | | | |
| 11. | Oral or written reports - Can the individual be required to submit regular oral or written reports to the District which will account for his or her actions? | | | |
| 12. | Payment by hour, week, or month - Will this person receive payments of regular amounts at stated intervals? | | | |
| 13. | Payment of business and/or travel expense - Does the District reimburse the individual for business or travel expense? | | | |
| 14. | Furnishing tools and materials - Will the District provide the tools and materials needed to perform the work? | | | |
| 15. | Right to discharge - Can the person be dismissed for failure to obey the instructions of a District employee? | | | |
| 16. | Right to terminate - Can the person terminate the relationship with the District without incurring any liability? | | | |
| 17. | Significant investment - Does the individual have a significant investment in the facilities used and is this investment essential as well as adequate for the job? | | | |
| 18. | Realization of profit or loss - Does the person have the opportunity to realize a profit or loss for the job? | | | |
| 19. | Working for more than one firm at a time - Can the person make the services available to a number of persons or firms at the same time? | | | |
| 20. | Making services available to the general public - Does the person make the services available to the general public by a business directory listing, a business license, advertisements, etc.? | | | |

I certify the above responses are correct to the best of my knowledge and belief.

Administrator Signature _____

Typed or Printed Name _____