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INDEPENDENT CONTRACTOR/CONTRACT WORKER DETERMINATION

Administrative Procedures

IRS Code stipulates that compensation paid to contractual workers is subject to the same Federal employment tax requirements as that of salaried workers. The IRS categorizes contractual personnel as either independent contractors or employees for the purpose of withholding and paying employment taxes. Generally, while independent contractors are responsible for the proper payment of employment taxes for themselves and their employees, the contracting agency is responsible for withholding and paying employment taxes for those contract personnel determined not to be (nor working for) an independent contractor. The State of Mississippi has a more narrow definition of "employee" than that used in the IRS regulation. Mississippi statute states that an "employee" is any person legally occupying a position in state service. In order to prevent potential confusion caused by IRS terminology and Mississippi statutory terminology, contractual personnel determined not to be (nor working for) independent contractors will be referred to as "contract workers." Therefore, contractual personnel who do not meet the definition of independent contractors should be classified as contractual workers and subject to the proper withholding of employment taxes. [Reference, Section 25-9-120, Mississippi Code Annotated (1972), as amended].

Agency and institutional heads are responsible for determining what work is being performed by contractual workers and ensuring that proper procedures are followed to comply with the IRS Code. Prior to entry and submission of the "Request for Contract Personnel Services Approval" (SPAHRs entry replacing the former SPB 620-88 form), each contractor will be classified using the criteria referenced below. If the contractor fails to qualify for classification as an independent contractor, then the contractor must be treated as a contractual worker. The department or agency should give consideration to the contract type. If the contractor is classified as a contractual worker, the agency is liable for the employer's share of employment taxes. In budgeting for the contract, the department should allow for this additional cost.

Please refer to the Department of Finance and Administration for instructions concerning the accounting codes and proper withholding of federal and state income taxes, Social Security/Medicare matching funds and unemployment insurance taxes. Refer also to IRS Publication 15-A, Employer Supplemental Tax Guide IRS Revenue Ruling 87-41, which stipulates as follows:

Twenty (20) Factors Used to Determine Employee Status: To determine if an employer-employee relationship exists, the Internal Revenue Service has developed a list of twenty (20) factors as guidelines to determine whether an individual is an employee. The presence of any of the following twenty (20) factors may indicate a possible employer-employee relationship depending on the occupation and the context in which services are performed. Under common-law rules, every individual who performs services subject to the will and control of an employer, as to both what must be done and how it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, as long as the employer has the legal right to control both the method and the result of the services. If an employer-employee relationship

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exists, it makes no difference how it is described. It does not matter if the employee is called an employee, a partner, agent or independent contractor. The factors are:

1. Instructions. An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.
2. Training. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
3. Integration. An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
4. Services Rendered Personally. An employee renders services personally. This shows that the employer is interested in the methods as well as the results.
5. Hiring Assistants. An employee works for an employer who hires, supervises, and pays workers. An independent contractor can hire, supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
6. Continuing Relationship. An employee generally has a continuing relationship with an employer. A continuing relationship may exist even if work is performed at recurring, although irregular intervals.
7. Set Hours of Work. An employee usually has set hours of work established by an employer. An independent contractor generally can set his or her own work hours.
8. Full Time Required. An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for who he chooses.
9. Work Done on Premises. An employee usually works on the premises of an employer, or works on a route or at a location designated by an employer.
10. Order or Sequence Set. An employee may be required to perform services in order or sequence set by an employer. This shows that the employee is subject to direction and control.
11. Reports. An employee may be required to submit reports to an employer. This show that the employer maintains a degree of control.
12. Payments. An employee is paid by the hour, week, or month. An independent contractor is usually paid by the job or on a straight commission.

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13. Expenses. An employee's business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control.
14. Tools and Materials. An employee is normally furnished significant tools, materials, and other equipment by an employer.
15. Investment. An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else
16. Profit or Loss. An independent contractor can make a profit or suffer a loss.
17. Works for More Than One Person of Firm. An independent contractor is generally free to provide his or her services to two or more unrelated persons or firms at the same time.
18. Offers Services to General Public. An independent contractor makes his or her service available to the general public.
19. Right to Fire. An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.
20. Right to Quit. An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

Commentary: For questionable situations, the federal government will assist agencies in making the Independent Contractor vs. Contract Worker determination with the submission of the correct federal forms.