



# IRS Publication 15-A

Employee or Independent Contractor?

HR Best Practices Summit

May 7, 2015

Office of the State Auditor

601-576-2800

[Tech@osa.ms.gov](mailto:Tech@osa.ms.gov)

# Employee or Independent Contractor

- An employer must generally withhold federal income taxes, withhold and pay over social security and Medicare taxes, and pay unemployment tax on wages paid to an employee.
- An employer does not generally have to withhold or pay over any federal taxes on payments to independent contractors

# Common-Law Rules

- In determining whether the person providing the service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

# Common-Law Rules

- Behavioral- Does the company control or have the right to control what the worker does and how the worker does his or her job?
- Financial- Are the business aspects of the worker's job controlled by the payer? (how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- Type of Relationship- Are there contracts or employee type benefits? Will the relationship continue and is the work performed a key aspect of the business?

# Behavioral Control

- A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done, as long as the employer has the right to direct and control the work.
- If you receive extensive instructions on how work is to be done, this suggests you are an employee.
- If you receive less extensive instructions about what should be done, but now how it should be done, you may be an independent contractor.

# Behavioral Control

- Training- If the business provides the worker with training on required procedures and methods, this indicates that the business wants work done a certain way, and suggests that the worker may be an employee.

# Financial Control

- If the worker has a significant investment in the work, he or she may be an independent contractor. While there is no precise dollar test, the investment must have substance. A significant investment is not required to be an independent contractor.

# Financial Control

- If the worker is not reimbursed for business expenses, then he or she may be an independent contractor, especially if the unreimbursed business expenses are high.
- If the worker can realize a profit or incur a loss, this suggests that the worker is in business for himself and may be an independent contractor.

# Relationship of the Parties

- If the worker receives employee benefits such as insurance, pension or paid leave this is an indication that the worker is an employee.
- A written contract may show what both the worker and the business intend. This is important because it can be impossible to determine status based on other facts.

# Form SS-8

- If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or a contractor, Form SS-8 can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.
- Be aware that it can take at least six months to get a determination.

# PERS

- If a state agency hires a state retiree, there could potentially be PERS issues.
- There is a form that you can fill out and submit to PERS where they will make the determination as to whether or not the worker is an employee or an independent contractor.

# Resources

- [www.irs.gov](http://www.irs.gov)
- Jackson, MS IRS office 601-292-4711
- [http://www.pers.ms.gov/Content/Forms/Independent Contractor Questionnaire.pdf](http://www.pers.ms.gov/Content/Forms/Independent_Contractor_Questionnaire.pdf)
- PERS – 601-359-3589