



## STATE OF CONNECTICUT

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## MEMORANDUM NO. 94-9

April 8, 1994

## TO THE HEADS OF ALL STATE AGENCIES

**Attention:** Chief Administrative and Fiscal Officers, Business Managers, and Payroll and Personnel Officers

**Subject:** **Determining a Worker's Status**

On January 26 and 27, 1994 the Office of the State Comptroller and the Internal Revenue Service (IRS) co-sponsored a seminar on determining the difference between an employee and an independent contractor. The seminar was held to aid State agencies in making the proper determination when classifying individuals as outlined by the IRS.

The majority of the discussion centered around "**Who are Employees?**". The business relationship that exists between the State agency and the person performing the services must be determined prior to the first payment. The person performing the services may be an independent contractor or a common-law employee.

**Independent Contractors**

People such as doctors, lawyers, veterinarians, construction contractors, subcontractors, etc., who follow an independent trade, business or profession in which they offer their services to the general public are generally **not** employees.

However, whether such people are employees or independent contractors **depends on the facts in each case**. The general rule is that an individual is an independent contractor if the employing agency has the right to control or direct only the result of the work and not the means and methods of accomplishing that result.

You do not have to withhold or pay taxes on payments made to independent contractors.

**Common-Law Employees**

There are twenty common-law factors that determine control under the common-law test. A questionnaire outlining these factors is attached for your convenience. This questionnaire should be photocopied and used as a tool in determining the employer-employee relationship for **each** individual performing a service.

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 so long as the employer has the **legal right** to control both the method and the result of the services.

Two usual characteristics of an employer-employee relationship are that the employer has the right to discharge the employee and the employer supplies tools and a place to work.

If you have an employer-employee relationship, it makes **no difference how it is described**. It does not matter if the employee is called an employee or an independent contractor. It does not matter how the payments are measured, how they are made, or what they are called; nor does it matter whether the individual is employed full-time or part-time.

For federal employment tax purposes, no distinction is made between classes of employees.

### **Independent Contractor - State Department of Labor**

The Unemployment Compensation Law defines employment as any services performed under any expressed or implied contract of hire creating an employer and employee relationship. To be considered an independent contractor, an individual must meet **all** three of the following tests:

**a.** He must be free from control and direction in connection with the performance of the service, both under his contract of hire and in fact;

**and**

**b.** His service is performed either outside the usual course of business of the employer **or** outside of all the employer's places of business;

**and**

**c.** The individual must be customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service performed.

### **Treating Employees as Non-Employees**

The State will be liable for income tax and employee social security and Medicare taxes if we do not deduct and withhold these taxes because your agency considers an employee as a non-employee.

In addition, the employing **state agency will be liable for** unemployment compensation taxes if the State Department of Labor determines that an employer-employee relationship exists.

### **Assistance in Determining a Worker's Status**

Determination of an individual's status is often a borderline decision. It is both technical and complex and should not be decided in haste.

The IRS can assist the State to determine whether a worker is an employee by completing "Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding". **However, prior to submitting the form to the IRS, it must be submitted to the Accounting Systems Division of the Comptroller's Office.** That office will forward it to the IRS after a preliminary review.

The Department of Labor - Unemployment Compensation Unit is available to review and discuss the status of a worker by contacting any field audit unit in any Unemployment Compensation branch office.

The Department of Administrative Services - Office of Personnel and Labor Relations issued a Personnel Division Memorandum Number 93-60/GA-7 dated June 11, 1993 concerning Personal Service Agreements (PSA's) and requests for waivers of the classified service. Their office is also available for assistance at 566-3236 for additional information.

In addition, the Accounting Systems Division is available to review and discuss the status of a worker. Please contact **Brenda Halpin, Accounting Manger, at 702-3443.**

**Reporting Compliance for Federal Information**

Once the determination has been made that an individual is a true independent contractor, a "Form W-9, Request for Taxpayer Identification Number and Certification" or similar form must be completed. The Office of the State Comptroller currently uses a substitute form, "CO-1055, Vendor Profile". This form must be completed by the State agency and forwarded to the Central Accounts Payable Division for entry into the Central Accounting System (CAS) prior to any payments being processed.

**Questions**

Questions may be directed to the Office of the State Comptroller as follows:

**Memorandum Interpretation:** Accounting Systems Division, 702-3440.

**Central Accounts Payable Division:**

Employer/Employee Relationship, 702-3423.  
Vendor Profile Completion, 702-3405.

**WILLIAM E. CURRY JR.  
STATE COMPTROLLER**

**WEC:BH:jrs**

**Attachment**

<b>TAXPAYERS NAME:</b>	<b>YEAR</b>
<b>QUESTIONNAIRE:</b>	<b>(S):</b>
Factors or elements that show control under the common law test or Employee-Employer relationship.	
	<b>Employee</b>
	<b>YES NO N/A</b>
	_____

**1. Instructions**

A worker who is required to comply with instructions is ordinarily an employee

**2. Training**

Training of a worker by an experienced employee working with him, by correspondence or by required attendance at meetings, or by using other methods.

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**3. Integration**

Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control.

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**4. Services Personally Rendered**

If the services must be rendered personally, it indicates that the employer is interested in the method as well as the results.

\_\_\_\_\_

**5. Assistants**

Hiring, supervising, and payment of assistants by the employer generally shows control over all the workers on the job.

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**6. Continuing Relationship**

The existence of a continuing relationship between an individual and the person for whom he performs services is a factor tending to indicate the existence of an employer-employee relationship.

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**7. Set Hours of Work**

The establishment of set hours of work by the employer is a factor indicative of control.

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**8. Full Time Required**

If the worker must devote his full time to the business of the employer, it implies control.

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**9. Place of Work**

Doing the work on the employer's premises is not control in itself; however, it does imply control.

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**10. Order or Sequence**

If a worker must perform services in the order or sequence as set for him by the employer, it shows that the worker is not free to follow his own pattern of work.

\_\_\_\_\_

**11. Reports**

If regular oral or written reports must be submitted to the employer, it indicates control.

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**12. Method of Payment**

Payment for work by the hour, week, or month is usually the manner for paying employees, whereas, payment on a commission or job basis is customary where the worker is an independent contractor.

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**13. Payment of Expenses**

Payment by the employer of the worker's business and/or traveling expenses is a factor indicating control over the worker.

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**14. Tools/Materials**

The furnishing of tools, materials, etc., by the employer is indicative of control over the worker. Materials are the most important factor.

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**15. Significant Investment**

A significant investment by a worker in facilities used by him in performing services for another tends to show an independent status.

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**16. Realization of Profit or Loss**

A worker who is in a position to realize a profit or suffer a loss as a result of his services is generally an independent contractor.

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**17. Working for More than One Firm**

If a worker performs services for a number of persons or firms at the same time, it usually indicates an independent status because, in such cases, the worker is usually free from control by any of the firms.

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**18. Services Available to General Public**

The fact that a worker makes his services available to the general public is usually indicative of an independent contractual relationship.

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**19. Right to Discharge**

The right to discharge a worker is an important factor in indicating that the worker is an employee and the person possessing the right is an employer.

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**20. Right to Terminate**

If the worker has the right to end his relationship with his employer at any time he wishes without incurring liability, that indicates an employer-employee relationship.

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