

## Guidelines for Determining Employee Status

An Independent Contractor works independently, normally contracting to receive a set fee for completing a specific scope of work within a specific period of time. An Independent Contractor is NOT an employee, and such an arrangement must NOT be used to circumvent employment procedures.

Employees perform services for their employer subject to the direction and control of a supervisor with respect to the result and methods of services provided.

It is very important to correctly identify whether a person should be an employee or Independent Contractor. This must occur before any services are rendered and payments are issued.

The primary method used to determine whether an employee/employer relationship exists is the IRS "common law" test. The IRS has identified twenty factors which indicate whether sufficient control is present to establish whether an employee/employer relationship exists. The central focus of the common law test is determining who has the right to control two basic elements:

- What must be done - i.e., the results of the work;
- How it must be done - i.e., the method by which the work or services are performed.

The IRS has already determined that the following individuals **must be employees**:

- Administrators
- Teachers
- Instructors
- Substitutes
- School Bus Drivers
- Clerical Staff
- Athletic Coaches
- Tutors
- Cafeteria Workers
- Counselors
- Examination Monitors
- Proctors
- Librarians
- Nurses
- Psychologists/Interns
- Interim Employees
- Specialty Teachers (art, poetry, music, etc.)

What the Office calls the individual is irrelevant to the analysis of the employment relationship. The IRS looks at the facts and relationship on a case-by-case basis. The decisive factor is that the employer possesses the legal right to control or direct both the results and the method of work or services in question. **As long as the employer is entitled to control both what must be done and how it must be done, the individual must be treated as an employee for tax withholding purposes.**

In accordance with STRS administrative directive 93-01, all districts and county offices having individuals under independent contractor status, who would otherwise be subject to STRS, are responsible for evaluating all independent contractor arrangements for compliance with the IRS common law rule. This requirement applies to all certificated individuals who are to be hired as independent contractors. If a contracted individual is later determined to be an employee, both the qualified employee and employer contributions, plus interest will be due on all earnings for the affected employee.

If the individual in question is not in one of the job categories outlined above, which requires the person to be hired as an employee, the attached Independent Contractor/Employee Questionnaire must be completed to determine the status of an individual.