




NIGP FORUM
Connecting Procurement Communities
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Contractor vs Employee Why it matters?


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SERVICES


- Intangible commodity
- Provided by Employee or Independent Contractor




Can you tell by looking at them?



Where they reside?



MAP OF THE UNITED STATES



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How about their title?

Evaluator

OFFICIAL

Organizer



CONTRACTOR
EXPERIENCE



AdvisOR



Consulting





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How about the amount of the contract?





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What if we ask the requesting department?






Ask Questions




Why does it matter?

- Taxes
- Benefits



IRS

- An employee (common-law)
- A statutory employee
- A statutory non-employee
- An independent contractor



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Looking at the relationship

- Behavioral
- Financial
- Type of Relationship





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Employee Attributes





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Independent Contractor Attributes






Ask Questions

- Vendor Questionnaire – Initial set up
- Form SS-8 Determination of Worker Status
- Contract – Scope of Work

Vendor Questionnaire

IRS Form SS-8

Part 3 Behavioral Control (Provide names and titles of specific individuals, if applicable.)

1. What specific training and/or instruction is the worker given by the firm?
2. How does the worker receive work assignments?
3. How does the firm determine the methods by which the assignments are performed?
4. Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution?
5. What types of reports are required from the worker? Attach examples.
6. Describe the worker's daily routine such as his or her schedule or hours.
7. At what location does the worker perform services (for example, firm's premises, team shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends at each location, if more than one.
8. Describe any measures the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings).
9. Is the worker required to provide the services personally? Yes No
10. If substitutes or helpers are needed, who hires them? Yes No
11. If the worker hires the substitutes or helpers, is approval required? Yes No
If "Yes," how often?
12. Who pays the substitutes or helpers? Yes No
13. Is the worker reimbursed if the worker pays the substitutes or helpers? Yes No
If "Yes," by whom?

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IRS Form SS-8

Part 4 Financial Control (Provide names and titles of specific individuals, if applicable.)

1. List the supplies, equipment, materials, and property provided by each party.
The firm: _____
The worker: _____
Other party: _____
2. Does the worker lease equipment, space, or a facility? Yes No
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.)
3. What expenses are incurred by the worker in the performance of services for the firm?
Specify which, if any, expenses are reimbursed by:
The firm: _____
Other party: _____
4. Type of pay the worker receives: Salary Commission Hourly Wage Piece Work
 Lump Sum Other (specify) _____
5. If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount: _____
6. Is the worker allowed a drawing account for advances? Yes No
If "Yes," how often? _____
Specify any restrictions.
7. Whom does the customer pay?
If worker, does the worker pay the total amount to the firm? Yes No. If "No," explain: _____
8. Does the firm carry worker's compensation insurance on the worker? Yes No
9. What expenses does the firm incur, if any, over the worker's normal level of liability (for example, loss or damage of equipment, material)?

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IRS Form SS-8

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Contract/Agreement

- Scope of work
- Term
- Deliverables
- Quality assurance
- Termination
- Payment
- Insurance
- Bonds



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Misclassification of Employee





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State of New Mexico 2014 Audit Rule



Employee or Independent Contractor
new language: section 2.2.2.10(H)(2)(b)

(b) The auditor should test to ensure that agency personal service contractors (1099 employees) meet the IRS tests to qualify as contract labor and that employees with contractor characteristics are properly classified as employees. The relevant IRS criteria for these tests are available in chapter 2 of the IRS Publication 15-A, Employer's Supplemental Tax Guide. In the event a personal services contractor is in substance an employee, the governmental agency could be liable for the employee's share of FICA and employer FICA match on the contract payments. Public Employees Retirement Association (PERA) or the Educational Retirement Board (ERB) could expect excess retirement payments to be refunded in some circumstances. See Sections 10-11-8(C) and 22-11-25 NMSA 1978.




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Activity



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- Thompson, S. (2011). Employee or contractor. *Journal of accountancy* 60-61
- U.S. Internal Revenue Service (2014) Independent Contractor (self-employed) or employee? Retrieved from <https://www.irs.gov>



Thank you!

Enjoy the Conference !

