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?

How about their title?
Evaluator
Organizer
Advisor

How about the amount of the contract?
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

Looking at the relationship

• Behavioral
• Financial
• Type of Relationship

Employee Attributes
Independent Contractor Attributes

Ask Questions

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

Vendor Questionnaire
Contract/Agreement

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

Misclassification of Employee

State of New Mexico
2014 Audit Rule

Employee or Independent Contractor
new language: section 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.
Activity

References