



## INDEPENDENT CONTRACTOR VERSUS EMPLOYEE STATUS

Associations often find themselves in the position of needing to hire people to perform services. It is important to determine whether these people are independent contractors or employees of the association, as this determination will have an impact on the association's tax reporting requirements and other obligations. If a person is treated as an independent contractor, the association is not responsible for any payroll taxes such as social security, unemployment and workers' compensation.

Generally, record keeping is at a minimum with only a 1099 form required to be issued at the end of the year summarizing total earnings of the independent contractor. If the association hires an employee, the association must withhold payroll taxes, submit these taxes with periodic filings, and incur payroll tax expense as well. A tax risk inherent in the improper classification is that the Internal Revenue Service has the power to audit business records of the association, and to determine if payments made to independent contractors are actually payments made to employees. If that is the case, the association can be liable for both the association's and the employee's share of the past three year's payroll taxes. A non-tax risk associated with independent contractors is if they are injured on the job and argue that they are employees. Since they are not normally covered by the association's workers' compensation plan, the association may end up paying for their injuries. The amount of control the association has over the worker is the most important factor in determining whether a worker is an employee. If the association has control over the details of the work, the person is classified as an employee. Additional factors which contribute to the employee classification are:

- \* The worker is given instructions about where, when, and how to do the work.
- \* The worker is furnished with supplies and tools.
- \* The worker performs services on a continuing basis during set hours.

The following criteria contribute to the classification of independent contractors:

- \* The worker employs and pays his own assistants.
- \* The worker is allowed to work for other employers.
- \* The worker sets his own hours.
- \* The worker is paid by the job.
- \* The worker furnishes his own tools.

The association should have a specific written contract which sets forth the terms and is signed by the independent contractor. Bills should be submitted by the independent contractor for payments. Although it is less costly and time consuming in classifying workers as independent contractors, it is important to do so only when the facts and circumstances dictate that this is the true relationship.

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