

IRS RIGHT TO CONTROL TEST

This document does not constitute legal advice. If the school district has concerns in determining the appropriate business relationship with service workers it should consult with its counsel.

The IRS test uses a totality of circumstances analysis. Their test is largely about control and is broken into three areas: behavioral control, financial control, and relationship of the parties. The IRS test is about making sure employers are paying the appropriate federal income, social security and medicare taxes.

Behavioral Control:

The test here is to determine whether the school district has the right to direct or control the work of the worker. Looking for the right to direct or control not whether the school district does control or direct the work.

- What type of instructions, if any, are given to the worker by the school district?
- The degree of the instructions the school district provides, if any, to the worker
- Does the school district evaluate the work of the worker
- Is training provided to the worker by the school district

Financial Control:

The test here is to determine whether or not the school district has the right to control the economic aspects of the worker's services. Again, it is about the right to control, not whether the control actually occurs.

- Will the worker make a significant investment performing his/her obligations under the service agreement?
- Will the worker have unreimbursed expenses (normal costs associated with doing business)?
- Will the worker have an opportunity for profit or loss?
- Are the worker's services available to the market for similar services? i.e. does the worker advertise and/or is the worker under contract for the same services to other school districts?
- What is the method of payment from the school district to the worker?

Relationship of the Parties:

The test here examines how the school district and the worker perceive their working relationship with each other.

- Is there a written agreement or contract?
- Does the worker receive any benefits from the school district?
- What is the likely permanency of the relationship between the worker and school district?
- Are the services performed by the worker a key part of the school district business?

IRS RIGHT TO CONTROL TEST - FACTORS TO CONSIDER

Will the school district be outlining or directing when or where the worker will do the work?	Yes	No
Will the school district be outlining or directing how worker will do the work?		
Will the school district be providing the tools or equipment to use do the work?	Yes	No
Will the school district determine where the worker will purchase supplies and support services to complete the work?	Yes	No
Will the school district provide training to the worker about required procedures and methods for getting the work is performed?	Yes	No
Will the school district be reimbursing the contractor for all expenses, such as supplies, copies, etc.?	Yes	No
Will the school district determine what order and sequence the worker will follow to complete the work?	Yes	No
Will the school district evaluate the worker during the performance of the service agreement?	Yes	No
Will the school district train the worker to follow its methods on how it wants the job done?	Yes	No
Will the worker have unreimbursed expenses, cost of doing business, throughout the project, such as fixed and ongoing costs whether the worker is working or not?	Yes	No
Will the worker have an opportunity for either profit or loss if the expenses exceed income or income exceeds expenses?	Yes	No
Is the worker able to seek out other business opportunities while under a service agreement with the school district?	Yes	No
Is the worker advertising his/her services to other school districts or similar markets?	Yes	No
Does the worker have a visible work presence (office, website, business line, stationary, business cards)?	Yes	No
Will the worker receive a flat fee for completing the job? (this issue on its own is not determinative as some services have hourly or daily rates such as attorneys)	Yes	No
Is there a written agreement between the worker and school district that outlines how the parties will work together?	Yes	No
Does the school district provide the worker with any benefits, including office equipment, keys, cell phones, etc.?	Yes	No
Is the service agreement for an indefinite period?	Yes	No
Is the worker performing any of the same key services that are performed by school district employees?	Yes	No

Answers of “yes” are more likely to indicate that it is an employee-employer relationship. No one factor is determinative. Remember it is a totality of the circumstances test. In an audit you will have to be able to demonstrate how the school district reached its conclusions and the reasonableness of the analysis given the information known and used when making the determination.

If you are still unable to make a decision, you can submit an IRS Form SS-8 and ask the IRS to decide for you whether the worker in an independent contractor or an employee. It can take up to six months for a determination to be made. There are pros and cons to submitting a request to the IRS.