

**State of Vermont Department of Labor –Unemployment & Wage and Hours
The ABC Test**

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

Vermont’s Department of Labor Unemployment Division’s definition of employee and test for reviewing the relationship between a worker and employer has evolved out of case law. The term employee is not defined under unemployment law. The department determines a worker’s eligibility for unemployment insurance based on the nature of the relationship between the school district and the worker. The Vermont Department of Labor presumes that there is an employment relationship unless and until the employer is able to demonstrate that all parts of the “ABC Test” are met.

By a Vermont Supreme Court ruling in June 2017, if a worker doing business as a limited liability corporation (LLC) by the Vermont Secretary of State’s office, even if it is a single member LLC, the worker is an independent contractor. The Court held that “an LLC is not an “individual” under the unemployment tax statutes and therefore is not subject to the ABC test.” If the worker is not an LLC, you need to complete the ABC test.

- A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of services and in fact. Direction and control will exist where the school district has the “right” to provide direction and control, regardless of whether such direction and control is actually exercised.
 - The worker bids for the job and is paid by the job
 - The worker completes the job with no direction, supervision or set hours

- B. Such service is either outside the usual course of business for which such service is performed OR that such service is performed outside of all the places of business of the enterprise for which such service is performed. Usual course of business is any business activity that the school district engages in. School district place of business is all places where the school district conducts its business, not just the main location, or office from which the school district conducts business.
 - Worker does work which none of your employees does and for which you do not advertise
 - Worker does all the work at their own facility/office

- C. Such individual is customarily engaged in an independent established trade, occupation, profession or business. Independently established means being established in a similar type of occupation or trade as the one being examined. Generally the worker must have some history of providing similar services for others in order for this part of the test to be met.
 - Worker has employees of their own or is an LLC
 - Worker has liable Unemployment Insurance account with the Vermont Department of Labor
 - Worker advertises their business services to the general public

VERMONT DOL ABC TEST – UNEMPLOYMENT LAW - FACTORS TO CONSIDER

Is the worker an LLC?	Yes	No
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If yes, the worker is an independent contractor. If no, continue the analysis under the ABC test.

Section A – Part I

Does the school district have the right or ability to provide direction to the worker under the terms of the service agreement?	Yes	No
Does the school district have the right or ability to provide direction to the worker while the worker performs the job?	Yes	No
Does the school district have the right or ability to control how the worker will perform the job under the terms of the service agreement?	Yes	No
Does the school district have the right or ability to control how the worker will perform the job while the worker is performing the job?	Yes	No

If you answered yes to any of these questions, the worker is an employee under the ABC test. If you answered no to all of these questions, proceed to the next set of questions.

Section A – Part II

Does the worker complete the job without any direction by the school district?	Yes	No
Does the worker complete the job without any supervision by the school district?	Yes	No

If you answered no to any of these questions, the worker is an employee under the ABC test. If you answered yes to both questions, move on to the next set of questions.

Section B – Part I

Is the service provided by the worker outside the usual course of business of the school district OR is the service provided outside of all school district locations, including but not limited to school buildings, central office and other school business locations?	Yes	No
Is the service provided outside of all school district locations, including but not limited to school buildings, central office and other school business locations?	Yes	No

If you answered yes to either one of the above questions, move on to the next section of the test. If you answered no to both questions, the worker is an employee under the ABC Test.

Section B – Part II

Does the worker perform jobs that none of your employees do?	Yes	No
Does the worker perform jobs that are NOT a part of the services provided as a function of the school district or that the community would associate as the business of the school?	Yes	No

If you answered no to any of these questions, the worker is likely an employee under the ABC test. If you answered yes to both questions, move on to the next set of questions.

Section C – Part I

Is the worker customarily engaged in an independent established trade, occupation, profession or business for which the school district is engaging his/her services?	Yes	No
Does the worker have other former and/or current clients or customers in the area he/she is being contracted with by the school district?	Yes	No

If you answered yes to all of the questions in this section, move on to the next section. If you answered no to most of the questions in this section, the worker is most likely an employee.

Section C – Part II

Does the worker have a website, personalized invoices and/or stationary with a business name provided?	Yes	No
Does the worker have business cards?	Yes	No
Does the worker have a business telephone?	Yes	No
Does the worker advertise his/her services to others?	Yes	No

If you answered yes to most of the questions in this section, the worker is most likely an independent contractor. If you answered no to most of the questions in this section, the worker is most likely an employee.

Other factors to consider:

Did the worker bid on this job?	Yes	No
Will the worker be paid by the job?	Yes	No
Does the worker perform their work in their own facility, home office, or at their own place of business?	Yes	No

If you answered yes to these questions, it is more likely the worker is an independent contractor. If not, it does not mean that they are an employee. There are circumstances where an independent contractor will be paid by the hour, or where you do not need to bid the job and they simply provide a quote. If the worker is going to work out of the school, i.e. does not have their own business location, be sure they pass all other factors to establish an independent contractor classification.

All three components, A, B & C of the test must be met to classify a worker as an independent contractor.

If you are still unable to make a decision, you can call the Vermont Department of Labor for guidance. You can contact the VT DOL at 1-802-828-1314