

**State of Vermont Department of Labor – Worker’s Compensation**  
**The Right to Control & Nature of Work 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 counsel.

Vermont’s Department of Labor uses a two part test to determine if the school district is required to provide worker’s compensation insurance to the worker. It is the Right to Control and Nature of Work Test.

The Department and the Court narrowly interprets exceptions to the workers compensation coverage requirements. Most of the time, they will find the school district needs to provide coverage, even when the individual worker considers himself/herself to be independent contractors.

Under Vermont’s Workers’ Compensation law, an independent contractor is someone who:

- Performs a job that is not similar or connected to your business, and
- Whose work you have no direction or control over.

If there is any doubt, the Department strongly encourages that the employer provide coverage to minimize the risk to the employer.

“Right to Control” demonstrates whether the employer “controls” the worker. This test does not require an employer to actually exercise control; it merely requires that an employer could, if it chose to do so, exercise control over the worker.

“Nature of Business” demonstrates whether the work performed is work that would otherwise be performed by employees of the school district.

**VERMONT DOL “RIGHT TO CONTROL AND NATURE OF WORK TEST”  
FACTORS TO CONSIDER**

**Right to Control:**

Does the worker control the means and methods of the work performance?	Yes	No
Does the worker hold his/her services out to the general public?	Yes	No
Does the worker perform the task without supervision?	Yes	No
Does the worker possess the required permits, licenses and certificates?	Yes	No
Is the worker doing business as corporation or under an assumed business name?	Yes	No
Does the work require extensive skill, education or experience?	Yes	No
Does the worker establish the routine or schedule?	Yes	No
Is there a fixed duration to the relationship?	Yes	No
Does the worker get paid by the job?	Yes	No
Does the work to be performed determine the hours of work?	Yes	No
Does the worker receive fringe benefits or bonuses?	Yes	No
Does the worker provide the equipment necessary for completion of the work task?	Yes	No

If the totality of responses to these questions leads to the conclusion that the school district “controls” its worker, then the analysis concludes and the school district must provide worker’s compensation insurance. This is about who has control, not whether it is exercised or not. This list of questions is not exclusive. No one question is determinative.

If the cumulative results determines that the worker should not be an employee under the “right to control” portion of the test, then the analysis continues under the “nature of the business” test.

**Nature of Business:**

Is the worker performing work that is normally or could be carried out by an employee of the school district in the usual course of business?	Yes	No
Is the worker performing activities that are an integral part of the school district’s business?	Yes	No

If the responses to these questions is yes, then a statutory employee-employer relationship exists and the school district must provide worker’s compensation insurance to the worker.

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