

## October 2013 Trustee Tip of the Month Independent Contractor or Employee?

Keeping a clear line between library employees and contractors can be difficult. Several facts come into play when the courts make the determination as to whether a worker is an independent contractor or an employee. Remembering these relevant facts, which fall into three main categories: behavioral control, financial control, and relationship of the parties, can help prevent costly mistakes. Each category is described in detail below.

**Behavioral Control** A worker is an employee when the business has the right to direct and control the worker.

- **Types of Instructions Given:** Employees are generally subject to the instructions of the business about when, where, and how to work. Independent contractors have more freedom to choose.
- **Degree of Instruction:** The more detailed the instructions, the more control the business exercises over the worker, and the more likely the worker is an employee.
- **Evaluation System:** If the worker's performance is measured by an evaluation system, the worker is likely an employee.
- **Training:** Requiring and providing training on how to do the job indicates a heightened level of control over the job, and is strong evidence that the worker is an employee.

**Financial Control** Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job.

- **Significant investment:** An independent contractor often has a significant investment in the equipment he or she uses.
- **Unreimbursed expenses:** Independent contractors are more likely to have unreimbursed expenses than are employees.
- **Opportunity for profit or loss:** Independent contractors stand to profit or lose money from a job.
- **Services available to the market:** Independent contractors often advertise, maintain a visible business location, seek out business opportunities, and are available to work in the relevant market.
- **Method of payment:** Employees are generally guaranteed a regular wage amount for an hourly, weekly, or other period of time while an independent contractor is usually paid a flat fee for a job.

**Relationship of the Parties** Type of relationship refers to facts that show how the worker and business perceive their relationship to each other.

- **Written Contracts:** A contract stating that the worker is an employee or an independent contractor is not sufficient to determine the worker's status. How the parties work together is the determining factor.
- **Employee Benefits:** Employees are typically provided benefits such as insurance, pension plans, paid vacation, sick days, and disability insurance, while independent contractors are not.
- **Permanency of the Relationship:** Hiring a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, is generally considered evidence that the intent was to create an employer-employee relationship.
- **Services Provided as Key Activity of the Business:** If a worker provides services that are a key aspect of the business, the worker is likely an employee.

For more information, visit the IRS's website at: [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee).

I am not an attorney and this is not legal advice. If you feel you need legal advice you should consult an attorney.

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