

## **Extracted from NYS Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax – NYS-50**

### **Employment**

The Unemployment Insurance Law defines employment as any service, unless specifically excluded, performed for compensation under a contract of hire, whether the contract is expressed or implied, written or oral, and without regard to whether the service is performed on a part-time, full-time, or casual basis.

### **Independent contractors**

Independent contractors are excluded from unemployment insurance coverage. These are persons who are actually in business for themselves and hold themselves available to the general public to perform services.

While the statute does not define an independent contractor, unemployment insurance case law has held that common law tests of master and servant must be applied in making a determination of whether services rendered by an individual are in the capacity of an employee or an independent contractor. Under these tests, all factors concerning the relationship between the two parties must be taken into consideration to determine if the party contracting for the services exercises, or has the right to exercise, supervision, direction, or control over the party performing the services. If the circumstances demonstrate either the exercise of, or the right to exercise, such supervision, direction, and control, it must be held that the services rendered are employment.

Since matters concerning the status of persons as employees or independent contractors are often complex, it is recommended that employers write to the Department of Labor, Liability and Determination Section (see *Unemployment insurance issues — Where can I find the answers?* on page 42) furnishing complete details of the relationship with the person engaged to render services and request a determination of their status. Failure to report and pay the tax due on the earnings of persons on the assumption that they are independent contractors may result in additional assessments and interest if their services are later determined to be employment.

Further information is available in our pamphlet, *Independent Contractors*, IA 318.14.