

## OHIO Office of Unemployment Compensation

Reference: <http://jfs.ohio.gov/ouc/uctax/faqtax.stm>

### What is the difference between an "Employee" and an "Independent Contractor" for purposes of U.C. Tax reporting?

An employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship. The right to discharge a worker at will and without cause is strong evidence of the right to exercise direction and control.

The services of an individual that is determined to be an independent contractor (under contract to perform a special service for an employer) are excluded from covered employment. To be **excluded employment**, it must be established by the employer that the contractor is free from direction or control over the service being performed.

There are *20 questions* used to help identify whether or not an employer-employee relationship exists.

- Who directs or controls the manner or method by which instructions are given to any individual(s) performing services?
- What training is required for individual(s) performing services?
- How are the services provided integrated into the regular functions of the employer?
- By whom does the business require that services be provided?
- Who hires, supervises and/or pays the individual(s) performing services?
- What type of relationship exists between the business and the individual(s) performing services which contemplates continuing or recurring work, even if not full time?
- Who sets the time (hours) during which the individual(s) services are to be performed?
- How much time does the business require the individual(s) performing services to devote to the business?
- Where does the business require that work be performed?
- Who sets the order of work the individual(s) follow while performing services for the business?
- What type of reports, oral or written, does the business require the individual(s) performing services to submit?
- How are the individual(s) performing services paid?
- Who pays expenses for the individual(s) performing services?
- Who furnishes the tools and materials used by the individual(s) performing services?
- What investment do the individual(s) performing services have in the facilities used to perform the services?
- What is the profit or loss to the individual(s) performing services as a result of the performance of such services?
- Do the individual(s) performing services also perform similar services for other businesses? If yes, for whom?
- How do the individual(s) performing services make their services available to the general public?
- Does the business have the right to discharge the individual(s) performing services? If, yes, in what manner?
- Do the individual(s) performing services each have the right to end the relationship with the business, without incurring liability pursuant to an employment contract or agreement? If yes, how?

A written contract that claims to create a relationship of principal and independent contractor is not controlling if the practice of the parties shows that the principal retains the right to exercise direction or control under the common law test.

For more information, please contact the Contribution Section at 614-466-2319, or write to us at ODJFS, Contribution Section, PO Box 182404, Columbus, Ohio 43218-2404. You may also contact your local Compliance office.

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### **Who is an "Employee" for purposes of U.C. Tax reporting?**

As defined in the Ohio Revised Code, an employee includes:

- Any officer of a corporation
- Any worker who is an employee under the usual common law rules
- Any worker whose services are specifically covered by law

An employee may perform services on a less than full-time or permanent basis. The law does not exclude services that are commonly referred to as day labor, part-time help, casual labor, temporary help, probationary, seasonal employment or outside labor.

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