

5224.0330 CONTROL OF METHOD AND MANNER OF PERFORMANCE.

Subpart 1. **Generally.** The most important factor in determining whether a person is an independent contractor is the degree of control which the purported employer exerts over the manner and method of performing the work contracted. The more control there is the more likely the person is an employee and not an independent contractor. Subparts 2 to 14 describe criteria for determining if there is control over the method of performing or executing services. The total circumstances, including the practices and the customs of the industry, must be considered to determine if control is present.

Subp. 2. **Authority over individual's assistants.** Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistants' work.

Subp. 3. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he or she is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail, or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, do not evince control.

Subp. 4. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

Subp. 5. **Place of work.** Control is indicated if work which could be done elsewhere is done on the employing units premises, especially when the work could be done elsewhere. When work is done off the premises, freedom from control is indicated except in occupations where the services are necessarily performed away from the premises of the employing unit.

Subp. 6. **Personal performance.** Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized

work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control is indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

Subp. 7. **Existence of continuing relationship.** The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates the existence of an employment relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

Subp. 8. **Set hours of work.** The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times indicates control.

Subp. 9. **Training.** Training of an individual by an experienced employee, by required attendance at meetings, and by other methods, indicates control, especially if the training is given periodically or at frequent intervals.

Subp. 10. **Amount of time.** Control is indicated where the worker must devote full time to the activity. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

Subp. 11. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, lack of control is indicated.

Subp. 12. **Tools and materials.** The furnishing of tools, materials, and supplies by the employing unit indicates control over the worker. When the worker furnishes these items, lack of control is indicated. Lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

Subp. 13. **Expense reimbursement.** Payment by the employing unit of either the worker's approved business or traveling expenses, or both, indicates control over the worker. A lack of control is indicated when the worker is paid on a job basis and is responsible for all incidental expenses.

Subp. 14. **Satisfying requirements of regulatory and licensing agencies.** Control is not indicated where an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies.

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