



**Bureau of Workers'
Compensation**

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RE: Ohio BWC Policy 32205302

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EMPLOYEES VS. SUB-CONTRACTORS

EMPLOYEES

According to the law, employees are those who receive pay or remuneration from employers for services rendered when the relationship between the employer and employee is created by a contract of hire, which may be written, oral, expressed or implied. Employees, part-time, seasonal, or full-time, may not be excluded from eligibility of benefits on the basis of age, citizenship, gender, race or relationship. Remuneration paid to employees is reportable to BWC by the employer. Persons that do not fall into the definition of employees are sole proprietors, partners, ministers and officers of family farm corporations. These persons must elect coverage.

SUBCONTRACTOR

Labor that is employed sporadically is sometimes referred to as spot labor or casual labor. It is important to ascertain whether the spot labor in question is an employee or an independent contractor. **THE FACT THAT YOU ISSUE A FEDERAL FORM 1099 DOES NOT MEAN THE "CONTRACTOR" WILL NOT BE CONSIDERED AN EMPLOYEE** for workers' compensation purposes. Use of the independent contractor questionnaire (UA-2) can assist in this determination and is recommended. If it is determined that this labor is, in fact, an independent contractor, then compensation is not reportable to Workers' Compensation.

Independent Contractor/Employee Questionnaire

Questions to consider in determining whether one is an employee or an independent contractor

- 1) Is the person required to comply with instructions from the other contracting party regarding the manner or method of performing services?
- 2) Is the person required by the other contracting party to have particular training?
- 3) Are the person's services integrated into the regular functioning of the other contracting party?
- 4) Is the person required to perform the work personally?
- 5) Was the person hired, supervised, or paid by the other contracting party?
- 6) Does a continuing relationship exist between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time?
- 7) Are the person's hours of work established by the other contracting party?
- 8) Is the person required to devote full time to the business of the other contracting party?
- 9) Is the person required to perform the work on the premises of the other contracting party?
- 10) Is the person required to follow the order of work set by the other contracting party?
- 11) Is the person required to make oral or written reports of progress to the other contracting party?
- 12) Is the person paid for services on a regular basis such as hourly, weekly, or monthly?
- 13) Are the person's expenses paid for by the other contracting party?
- 14) Are the person's tools and materials furnished by the other contracting party?
- 15) Is the person provided with the facilities used to perform services?
- 16) Does the person fail to realize a profit or suffer a loss as a result of the services provided?
- 17) Does the person only perform the service for this specific employer, rather than a number of employers at the same time?
- 18) Does the person choose not to make the same services available to the general public?
- 19) Does the other contracting party have a right to discharge this person?
- 20) Does the person have the right to end the relationship with other contracting party without incurring liability pursuant to an employment contract or agreement?