



Ohio Administrative Code Rule 145-1-42 Services under a contract.

Effective: January 1, 2019

(A) For purposes of rule 145-1-41 of the Administrative Code, the board shall consider the following factors in its determination:

(1) "Contract employee" means an individual who:

(a) May be a party to a bilateral agreement which may be a written document, ordinance, or resolution that defines the compensation, rights, obligations, benefits and responsibilities of the individual as an employee;

(b) Is paid earnable salary at a specific periodic rate for services personally performed for the public employer and who appears on the employer's payroll;

(c) Is eligible for workers' compensation or unemployment compensation;

(d) May be eligible for employee fringe benefits such as vacation or sick leave;

(e) Is controlled or supervised by personnel of the public employer as to the manner of work;

(f) Should receive an Internal Revenue Service form W-2 for income tax reporting purposes.

(2) "Independent contractor" means an individual who:

(a) May be a party to a bilateral agreement which may be a written document, ordinance, or resolution that defines the compensation, rights, obligations, benefits and responsibilities of both parties;

(b) Is paid a fee, retainer or other payment by contractual arrangement for particular services;



- (c) Is not eligible for workers' compensation or unemployment compensation;
 - (d) May not be eligible for employee fringe benefits such as vacation or sick leave;
 - (e) Does not appear on a public employer's payroll;
 - (f) Is required to provide his own supplies and equipment, and provide and pay his assistants or replacements if necessary;
 - (g) Is not controlled or supervised by personnel of the public employer as to the manner of work;
 - (h) Should receive an internal revenue service form 1099 for income tax reporting purposes.
- (3) "Personal service contract" means the same as a contract for an independent contractor.
- (a) A contract employee is a public employee and shall become a contributor to the public employees retirement system.
 - (b) Contributions are due on the employee's earnable salary, as defined in division (R) of section 145.01 of the Revised Code and rule 145-1-26 of the Administrative Code, which is paid by the public employer to the employee for services actually performed by the employee.
- (2) An independent contractor is not a public employee and shall not become a contributor to the retirement system.
- (C) Notwithstanding rule 145-1-26 or 145-1-53 of the Administrative Code, if a contract employee performs services for which the employee also receives a payment, fee or commission over and above services for which the employee receives earnable salary, and for which the individual is an independent contractor, the payments for those services over and above their salary services are not earnable salary. The employee is not a member for such additional services, no contributions are due, and no service credit shall be granted.
- (D) An individual who entered into a personal service contract with a public employer prior to



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August 20, 1976, shall be a member of the retirement system and contributions shall be remitted for the remaining period of the contract if the duties and working relationship are substantially similar to a classification position paid on the payroll of the public employer.