



Ohio Administrative Code

Rule 3358:5-11-04 Independent contractor status policy.

Effective: [October 23, 2015](#)

(A) The law treats employees and independent contractors differently. Independent contractors are often exempt from labor and employment legislation while employees are usually covered. Failure to properly classify independent contractors can lead to unemployment tax liability, insurance or benefits suits, wage and hour claims, etc.

(B) To determine whether a worker is an independent contractor or an employee under common law, the relationship between the worker and the college must be examined. All evidence of control and independence including behavioral control, financial control and the type of relationship itself should be considered.

(1) Behavioral control covers facts that show whether the college has a right to direct or control how the work is done through instructions, training, or other means.

(2) Financial control covers facts that show whether the college has a right to direct or control the financial and business aspects of the workers job. This includes:

(a) The extent to which the worker has unreimbursed business expenses.

(b) The extent of the workers investment in the facilities used in performing services.

(c) The extent to which the worker makes his or her services available to the relevant market.

(d) How the college pays the worker.

(e) The extent to which the worker can realize a profit or incur a loss.

(3) Type of relationship covers facts that show how the parties perceive their relationship. This includes:



- (a) Written contracts describing the relationship the parties intended to create.
 - (b) The extent to which the worker is available to perform services for other, similar businesses.
 - (c) Whether the college provides the worker with employee-type benefits such as insurance, retirement plan, vacation pay or sick pay.
 - (d) The permanency of the relationship.
 - (e) The extent to which services performed by the worker are a key aspect of the regular business of the college.
- (C) The internal revenue service uses twenty factors for classifying workers as independent contractors. Other agencies use a sample A-B-C test or some variation to determine independent contractor status.