

Personnel

SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR INDEPENDENT CONTRACTOR

The District has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor.

A certification of the determination that an individual is an employee is required when the District initially reports to the New York State and Local Retirement System (NYSLRS) certain covered professionals, including those persons providing services as an attorney, physician, engineer, architect, accountant, or auditor.

When deciding whether an individual is an employee or an independent contractor, the District must consider certain factors. These factors provide direction in determining whether an individual is an employee, and therefore eligible for membership in the NYSLRS and for service credit, or an independent contractor who is not eligible for membership.

Definitions

"Employee" means an individual performing services for the District for which the District has the right to control the means and methods of what work will be done and how the work will be done.

"Independent contractor" means a consultant or other individual engaged to achieve a certain result for the District, but who is not subject to the direction of the District as to the means and methods of accomplishing the result. The District will not enter into agreements with independent contractors for instructional services except under the limited circumstance permitted by the New York State Education Department (NYSED).

Factors Supporting the Conclusion that an Individual is an Employee Rather than an Independent Contractor

When making the determination of whether an individual is rendering services as an employee rather than an independent contractor, the District must consider the following factors, including whether:

- 1) The District controls, supervises, or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;
- 2) The individual reports to a certain person or department at the beginning or during each work day;
- 3) The individual receives instructions as to what work to perform each day;
- 4) The individual's decisions are subject to review by the District;
- 5) The District sets hours to be worked;

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- 6) The individual works at established and fixed hours;
- 7) The District maintains time records for the individual;
- 8) The District has established a formal job description;
- 9) The District's Board formally created the position with the approval of the local civil service commission where necessary;
- 10) The District prepares performance evaluations;
- 11) The District requires that the individual attend training;
- 12) The District provides permanent workspace and facilities (including, but not limited to, office, furniture, and/or utilities);
- 13) The District provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies, and/or clerical assistance);
- 14) The individual is covered by a contract negotiated between a union and the District;
- 15) The individual is paid salary or wages through the District's payroll system;
- 16) Tax withholding and employee benefit deductions are made from the individual's paycheck; and
- 17) The individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance, and/or grievance procedures).

Factors Supporting the Conclusion that an Individual is an Independent Contractor Rather than an Employee

When making the determination of whether an individual is rendering services as an independent contractor rather than as an employee, the District must consider the following factors, including whether:

- 1) The individual has a personal employment contract with the District;
- 2) The District pays the individual for the performance of services through the submission of a voucher;

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- 3) The individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the District;
- 4) The individual provides similar services to the public;
- 5) The individual is concurrently performing substantially the same services for other public employers; and
- 6) The individual is also employed or associated with another entity that provides services to the District by contract, retainer, or other agreement.

Employees to be Reported to NYSLRS

All persons employed by the District will be included in the reporting requirements. The District will provide the information deemed necessary by the retirement system for all employees except those who actively participate in another public retirement system or program. In the case of employees who are in the process of being registered to membership, all service, salary, and deduction data and mandatory contributions will be accumulated by the District and the accumulation will be included with the first monthly report which is due after the employee's registration or identification number has been assigned.

An individual serving the District as an independent contractor or consultant is not an employee and should not be reported to the retirement system.

Employer Reporting of Certain Professions

In the case of an individual whose service has been engaged by the District in the capacity of attorney, physician, engineer, architect, accountant, or auditor and the District has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, the District will submit to the retirement system, in a form prescribed by the Comptroller and certified by the Chief Fiscal Officer of the District, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant.

This certification will be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the District to the retirement system. The District will submit copies of documentation pertaining to the appointment of the individual as an employee, including a copy of the minutes of the Board meeting where such individual was appointed an employee by the Board, and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary.

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When making a determination as to an individual's status as an employee or independent contractor, no single factor will be considered to be conclusive of the issue. All factors will be considered in making an assessment of an individual's status when engaged to perform services.

The District will also complete, as necessary, a Certification Form for Individuals Engaged in Certain Professions (Form RS 2414) as promulgated by the Office of the New York State Comptroller.

2 NYCRR §§ 315.2 and 315.3

October 17, 2022