

**R994. Workforce Services, Unemployment Insurance.**

**R994-204. Covered Employment.**

**R994-204-301. Independent Contractor Services.**

(1) An independent contractor is a worker who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the employer's control and direction while performing services for the employer. A worker must clearly establish his or her status as an independent contractor by taking steps that demonstrate independence indicating an informed business decision has been made.

(2) Payments to or through another entity for personal services performed by a worker is exempt from employment if the personal services meet the provisions of Subsection 35A-4-204(3).

**R994-204-302. Independent Contractor Determination.**

(1) The Department will determine the status of a worker based upon information provided by the employer, the worker, and any other available source.

(2) If a worker files a claim for benefits and the Department, as the result of an audit, investigation, or declaratory ruling, has made a determination that the worker is an independent contractor and his or her services for an employer are exempt from coverage, any earnings from those services for that employer will be excluded from the claimant's monetary determination. The claimant may protest the monetary determination by filing an appeal as provided in Section R994-204-402.

**R994-204-303. Factors for Determining Independent Contractor Status.**

Services will be excluded under Section 35A-4-204 if the service meets the requirements of this rule. Special scrutiny of the facts is required to assure that the form of a service relationship does not obscure its substance, that is, whether the worker is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in Subsections R994-204-303(1)(b) and R994-204-303(2)(b) of this section are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed. Additionally, some factors do not apply to certain services and, therefore, should not be considered.

(1) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will determine

whether a worker is customarily engaged in an independently established trade or business:

**(i) Separate Place of Business.** The worker has a place of business separate from that of the employer.

**(ii) Tools and Equipment.** The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, "tools of the trade" used by certain trades or crafts do not necessarily demonstrate independence.

**(iii) Other Clients.** The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.

**(iv) Profit or Loss.** The worker can realize a profit or risks a loss from expenses and debts incurred through an independently established business activity.

**(v) Advertising.** The worker advertises services in telephone directories, newspapers, magazines, the Internet, or by other methods clearly demonstrating an effort to generate business.

**(vi) Licenses.** The worker has obtained any required and customary business, trade, or professional licenses.

**(vii) Business Records and Tax Forms.** The worker maintains records or documents that validate expenses, business asset valuation or income earned so he or she may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(c) If an employer proves to the satisfaction of the Department that the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(2) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the worker who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the worker is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of a worker:

**(i) Instructions.** A worker who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

**(ii) Training.** Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

**(iii) Pace or Sequence.** A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and

scheduling of the services of more than one worker does not indicate control and direction.

**(iv) Work on Employer's Premises.** A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

**(v) Personal Service.** A requirement that the service must be performed personally and may not be assigned to others indicates the right to control or direct the manner in which the work is performed.

**(vi) Continuous Relationship.** A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

**(vii) Set Hours of Work.** The establishment of set hours or a specific number of hours of work by the employer indicates control.

**(viii) Method of Payment.** Payment by the hour, week, or month points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job. Control may also exist when the employer determines the method of payment.

**KEY: unemployment compensation, employment tests, independent contractor**

**Date of Enactment or Last Substantive Amendment: July 1, 2007**

**Notice of Continuation: March 25, 2015**

**Authorizing, and Implemented or Interpreted Law: 35A-4-204**