

**INDIVIDUAL CONTRACTORS: CONTRACT EMPLOYEES VS. INDEPENDENT CONTRACTOR**

**Issue Date: November 1, 2005**

**Introduction**

This policy, which is jointly issued by the Operational Services Division, Office of the Comptroller and Human Resources Division, highlights the differences between the two types of individual workers: **contract employees** and **independent contractors**. It provides guidance to departments in determining whether to hire a contract employee or to contract with an independent contractor and then provides guidance pertaining to the recruitment and contract execution for contract employees. This guidance includes the Commonwealth's three-part test, which incorporates the requirements of state and federal law and which must be utilized by departments in determining whether an individual is a contract employee or an independent contractor.

When a department requires the services of an individual, it must determine, before acquiring the services, if the service is a competitive procurement exception (contract employee) or if it must conduct a competitive procurement (independent contractor). In addition, when a department has conducted a competitive procurement, which was not specifically for the services of an individual but which has resulted in the selection of an individual, the department must review the specific working circumstances of the contract and the individual's work status to determine if the individual will be deemed a contract employee or independent contractor in their working relationship with the department.

**Employment Status Form (Combined State and Federal Tests for Employment Status)**

An *Employment Status Form* has been developed to assist departments in two ways:

1. To make the determination PRIOR to the procurement of services, as to whether the type of work to be performed will trigger an employment relationship (contract employee) or a non-employment relationship (independent contractor) in order to determine the proper procurement method to be used to acquire the services, and
2. To confirm the employment status when a contract is signed with an individual contractor selected from either an RFR (independent contractor) or posting (contract employee), which is a required attachment to the *Standard Contract Form*.

The checklist on the *Employment Status Form* reconciles the Federal IRS 20 factors (which are focused primarily on whether an employee falls under the "supervision and control" of a department) with the stricter Massachusetts presumption that an individual will be considered a contract employee "unless" the individual passes all three parts of the Massachusetts three-part test.

While the IRS factors consider the work context and the overall balance of the 20 factors, the Massachusetts law requires that the employer/employee relationship be definitively established. The Massachusetts Attorney General has interpreted this test to be rigid, thus resulting in the presumption that an individual contractor will be considered a contract employee unless the three-part test under M.G.L. c. 149, s. 148B is met. The burden is on the department to defend a determination of independent contractor status. Massachusetts law imposes strict penalties when a worker is misclassified. Therefore, a department must complete the *Employment Status Form* in order to certify the status for all individual contractors and attach it to the *Standard Contract Form*.

## **Posting or Procurement?**

A department does not always know in advance whether services can be best performed by an individual contractor or by a company or firm. Therefore, whenever services are being performed, the department should make the following determinations:

1. **Identify the Business Needs of the Department:** The hiring department should develop performance specifications for the services necessary to meet the department's business needs, including where the work needs to be performed, the level of control and supervision that will be required for performance, whether the work hours or schedule will be set by the department or the contractor, whether the work is performed as part of or outside the usual course of business of the department.
2. **Apply the Commonwealth Three-Part Test to the Business Needs: (*Employment Status Form*):** The department must determine if the type of work to be performed can be performed by a firm or an individual and if the type of oversight relationship will trigger an employer-employee relationship or that of an independent contractor. To make this determination, the department must ***review*** the *Employment Status Form* to determine if an employer-employee relationship will be created if an individual is selected for performance, as follows:
  - a. If the work can be performed by a firm or an individual, or the department is unsure of how best to perform the requisite service, and the review of the *Employment Status Form* 3-part test indicates that there will not be an employer-employee relationship, the department is required to conduct a procurement for these services. See *How to Do a Competitive Procurement* in the OSD Procurement Information Center ([www.mass.gov/osd](http://www.mass.gov/osd)).
  - b. If the work can only be performed by an individual, and the review of the *Employment Status Form* 3-part test indicates that there will be an employer-employee relationship, the department is required to post the contract notice for a contract employee, as outlined below.

## **Commonwealth Three-Part Test**

Current employment law establishes separate tests for determining employment status under both state and federal law. State law, M.G.L. c. 149, s. 148B, establishes a three-part test that presumes an individual is a contract employee unless:

1. The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact.
2. The service is performed outside the usual course of the business of the employer.
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

This test is a much stricter test than the federal IRS SS-8 test, which departments have used in the past to determine employment status. Any individuals who were classified as independent contractors using the SS-8 test should be reassessed to determine whether they are also independent contractors under the Commonwealth's laws. If the individual would be classified as an independent contractor under the SS-8 test, but as a contract employee under the Commonwealth Three-Part test, the individual should be reclassified as a contract employee. The Attorney General's Office may impose penalties if the three-part test shows that an individual should be a contract employee, and the individual was misclassified as an independent contractor.

### **Federal IRS SS-8 Test**

Under federal law, the Internal Revenue Service (IRS) has established 20 factors and its corresponding [SS-8 Form](#) that are used to determine whether an individual is a contract employee or an independent contractor.

**A “Yes” response to the following questions means the individual may be a contract employee:**

1. Does the principal provide instructions to the worker about when, where, and how he or she is to perform the work?
2. Does the principal provide training to the worker?
3. Are the services provided by the worker integrated into the principal's business operations?
4. Must the services be rendered personally by the worker?
5. Does the principal hire, supervise and pay assistants to the worker?
6. Is there a continuing relationship between the principal and the worker?
7. Does the principal set the work hours and schedule?
8. Does the worker devote substantially full time to the business of the principal?
9. Is the work performed on the principal's premises?
10. Is the worker required to perform the services in an order or sequence set by the principal?
11. Is the worker required to submit oral or written reports to the principal?
12. Is the worker paid by the hour, week, or month?
13. Does the principal have the right to discharge the worker at will?
14. Can the worker terminate his or her relationship with the principal any time he or she wishes without incurring liability to the principal?
15. Does the principal pay the business or traveling expenses of the worker?

**A “Yes” response to the following questions means the individual may be an independent contractor.**

16. Does the worker furnish significant tools, materials and equipment?
17. Does the worker have a significant investment in facilities?
18. Can the worker realize a profit or loss as a result of his or her services?
19. Does the worker provide services for more than one firm at a time?
20. Does the worker make his or her services available to the general public?

### **Contract Employees (Procurement Exception Under 801 CMR 21.05(6))**

The hiring of contract employees is a competitive procurement exception under 801 CMR 21.05(6) since individuals deemed contract employees will be hired under the normal personnel procedures of the department, as follows:

**Determine the compensation of the contract:** Departments should determine the rate or range of compensation based on the performance and qualifications requirements and available funding. Departments may adjust the rate or range to reflect the lack of fringe benefits for contract employees and the selected candidate’s qualifications. Then, departments should determine the total compensation for the anticipated contract duration.

**Post the contract notice:** Departments should post, advertise or solicit contract candidates as deemed appropriate, e.g., colleges and universities, newspapers, trade journals, electronically ([Commonwealth Employment Opportunities](#)), and in accordance with any internal procedures on recruitment developed for the department. The posting should include the description of performance requirements or functions, any minimum qualifications, the compensation rate or range, expected duration and possible options to renew. It should also include instructions for how and when candidates should respond to the posting.

## OPERATIONAL SERVICES DIVISION, OFFICE OF THE COMPTROLLER & HUMAN RESOURCES DIVISION

**Select the contractor:** Selection of a contract employee should be in accordance with the department's standard interview process. The evaluation should take into account the performance requirements and minimum qualifications of the posting. See HRD's [Model Hiring Plan](#), Structured Interview Guidelines. See the [Massachusetts Commission Against Discrimination Pre-Employment Inquiries Fact Sheet](#) for additional information on appropriate interview questions and topics.

**Contract Forms:** Contract employees must execute the *Commonwealth Terms and Conditions* and the *Standard Contract Form*. The attachments should include a copy of the contract posting or an alternative attachment containing the description of the contract performance, any minimum qualifications, the compensation rate or range and a copy of the contractor's résumé (or statement of qualifications). Include completed *Employment Status Form*.

**Amendments:** After contract execution, annual or other options to renew or amendments to the contract are exercised at the department's option in accordance with the duration listed in the posting by executing a *Standard Contract Amendment Form* prior to the termination date of the contract.

### Payroll System Requirements:

- Contract employees must be paid through the state payroll system that automatically makes tax deductions and alternative retirement contributions.
- Contract employees are subject to alternative retirement contributions under COBRA 1990.
- Contract employee labor will be distributed the same way regular employee labor is distributed. By default, all charges will be attributed to the HR/CMS position accounting line (Department, Unit, and Appropriation). If the position distribution needs to be changed or additional data needs to be captured for labor history reporting, a default distribution, pay period exception, or labor adjustment should be created in LCM. Contract employee payroll payments will be incorporated into LCM predictive/production payroll reports so that departments can monitor and manage funded/unfunded payroll accounts. LCM Labor History and CIW reports can be used to track contract employee payroll expenses.
- The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to hire an unauthorized worker. Employers must comply with this requirement by verifying the identity and right to work of all employees hired after November 6, 1986. Prior to hiring any individual, employers can protect themselves by obtaining proof of the right to work in the U.S. This proof of right to work is known as [Form I-9, Employment Eligibility Verification](#), available on the U.S. Citizenship and Immigration website.
- The individual's name must match Social Security Administration records. Correct names and social security numbers (SSN) on W-2 wage reports are the keys to successful processing of the Commonwealth's annual wage report submission. Not only can the Commonwealth be subject to penalties when employee names and SSNs don't match Social Security Administration records, but also unmatched wage reports can cause earnings that are not posted to your employees' records. To verify the name and SSN match, call the SSA toll-free number for employers at 1-800-772-6270 provide Social Security Number, date of birth and gender. The Commonwealth EIN is 04-6002284. Double check to make sure you have entered the SSN correctly into the payroll system.
- Upon hiring or rehiring an individual, verify Medicare Status. For Rehires, verify that a "break in service" has not occurred. Validate that Income and Medicare taxes are appropriately withheld from wages paid to contract employees, in amounts determined by the employees' withholding certificates and governmental withholding tax tables."
- Contract employees receive a W-2 for state and federal tax purposes.

**Massachusetts Labor Relations Commission Test:**

For the purposes of determining collective bargaining status, the Massachusetts Labor Relations Commission does not distinguish between a contract employee and an independent contractor. Only those individuals who meet the Labor Relations Commission's standard of independent contractor will be exempt from the definition of employee pursuant to M.G.L. c. 150E and, as such, exempt from union membership. In determining whether an employee is an independent contractor, the Labor Relations Commission examines whether the alleged employer retains control over the worker. In analyzing the control issue, the Labor Relations Commission examines the duties of the workers, the type of supervision they receive, how the employer treats the workers, and the method in which the workers are paid. The funding source for the position is irrelevant to the Labor Relations Commission's analysis.

**OPERATIONAL SERVICES DIVISION, OFFICE OF THE COMPTROLLER & HUMAN RESOURCES DIVISION**

<b>Comparison Table for Contract Employees and Independent Contractors</b>		
<i>Item</i>	<i>Contract Employee</i>	<i>Independent Contractor</i>
Employment status	Contract employee, based upon completion of <i>Employment Status Form</i> , a required contract attachment. Not considered in the Full Time Equivalent (FTE) count of Commonwealth employees.	Non-employee, independent contractor based upon completion of <i>Employment Status Form</i> , a required contract attachment. Not considered in the Full Time Equivalent (FTE) count of Commonwealth employees.
Can contractor be considered a “consultant”?	No. Contract employees are not considered consultants even if performing specialized or consultant-like services. Contract employees are classified under the CC object class in the Office of the Comptroller's <i>Expenditure Classification Handbook</i> .	Yes, if providing consultant services under the HH, N01-N14 and U05 object classes, when the value of the services for the duration of the need exceeds the incidental purchase threshold. Requires secretariat sign-off for amounts over \$1,000.
<i>Consultant Contractor Mandatory Submission Form?</i>	No. The <i>Consultant Contractor Mandatory Submission Form</i> is not applicable.	Yes. The <i>Consultant Contractor Mandatory Submission Form</i> is required for consultant services that exceed the incidental purchase threshold.
Procurement or posting required	Posting. If the review of the <i>Employment Status Form</i> determines that an employment relationship will exist, the department may hire a contract employee as a procurement exception under 801 CMR 21.05(6). A posting must be made under normal hiring process.  Exception: Object Code C26 for legal services requires prior approval of the Governor’s Chief Legal Counsel prior to selection under M.G.L. c. 30, s. 65 and 801 CMR 21.01(2)(b) and prior Office of the Attorney General approval.	Procurement. If the review of the <i>Employment Status Form</i> determines that an employment relationship will <u>not</u> exist, the department must use an existing statewide contract. If there is no statewide contract, the department may:  1. use an incidental purchase if the total value of the services for the duration of the need is \$5,000 or less, 2. Conduct a RFR/procurement if value of the services for the duration of the need exceeds \$5,000.  Exception: Object Codes H09 and N03 for legal services require prior approval of the Governor’s Chief Legal Counsel prior to selection under M.G.L. c. 30, s. 65 and 801 CMR 21.01(2)(b) and prior AGO approval. Requires secretariat sign-off for amounts over \$1,000.
Selection	Recruitment and interview are in accordance with department’s internal hiring policy and HRD guidelines (if applicable).	Review of RFR response, or responses to Requests for Quotes from statewide contractors, or submissions from incidental purchase bidders for legal services only.

**OPERATIONAL SERVICES DIVISION, OFFICE OF THE COMPTROLLER & HUMAN RESOURCES DIVISION**

**Comparison Table for Contract Employees and Independent Contractors**

<i>Item</i>	<i>Contract Employee</i>	<i>Independent Contractor</i>
Fringe benefits	<p>No (generally)</p> <p>Not entitled to state retirement program, employee insurance programs, sick, vacation, personal leave or other fringe benefits.</p> <p>Covered as an employee for Workers' Compensation, unemployment and torts liability under M.G.L. c. 258. Required to contribute to OBRA Retirement.</p>	<p>No (generally)</p> <p>Not entitled to state retirement program, employee insurance programs, sick, vacation, personal leave or other fringe benefits.</p>
<i>Commonwealth Terms and Conditions</i>	Required	Required
<i>Standard Contract Form</i>	<p>Required</p> <p>Attach a copy of the posting or alternative description of performance requirements, compensation and contractor's resume or statement of qualifications and the <i>Employment Status Form</i>. Per Executive Order #444, attach <a href="#">Contract Employee Disclosure Form (HRD)</a>.</p>	<p>Required for all contracts that exceed the incidental purchase threshold.</p> <p>Attach procurement documents (RFR and response), required attachments, <i>Employment Status Form</i>. See OSD's Procurement Information Center or Comptroller Policy <i>State Finance Law and General Requirements</i> for requirements.</p>
Tax identification forms	Must complete a Form W-4.	Must complete a Form W-9 or W-8, as appropriate.
Payroll or accounting system	Must be paid through state payroll system (HR/CMS/LCM)	Must be paid through state accounting system (MMARS)
Tax reporting form	Form W-2	1099-MISC
Other contractor requirements	<ul style="list-style-type: none"> <li>• Contractors <b>MAY NOT</b> be used as a substitute for a state position and may not supervise employees in state positions.</li> <li>• Contractors may not act as an "agent" for a department and therefore, may not be placed in a position that will allow or create the perception that a contractor can make decisions or commitments on behalf of a department. Therefore, a department may not delegate signature authorization or transaction approval responsibility or security to a contractor.</li> <li>• Contractors are required to maintain the security and confidentiality of any records or data of the department to which they have access during and after the contract period.</li> </ul>	

**Associated Resources:**

- 801 CMR 21.00 Procurement of Commodities or Services, Including Human and Social Services
- Consultant Contractor Mandatory Submission Form
- 29 USC §201 Fair Labor Standards Act
- IRS Form SS-8 “Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding”
- Omnibus Budget Reconciliation Act of 1990 (OBRA)
- Expenditure Classification Handbook issued by the Office of the Comptroller
- Massachusetts General Laws, Chapter 7, Section 22
- Massachusetts General Laws, Chapter 7A, Sections 3, 7 and 8
- Massachusetts General Laws, Chapter 29, Section 29A: Chapter 149
- Massachusetts General Laws, Chapter 30, Sections 51 and 52

**OPERATIONAL SERVICES DIVISION, OFFICE OF THE COMPTROLLER & HUMAN RESOURCES DIVISION**

**EMPLOYMENT STATUS FORM**

FOR DETERMINING STATUS OF CONTRACT EMPLOYEE/INDEPENDENT CONTRACTOR

INDIVIDUAL CONTRACTOR NAME: \_\_\_\_\_

PROJECT/CONTRACT DESCRIPTION/#: \_\_\_\_\_

Departments are required to determine the type of work to be performed and whether it qualifies for contract employee or independent contractor status **PRIOR TO PROCURING THE SERVICES**. Once an individual contractor is hired, this form must be completed and filed with the contract. Pursuant to M.G.L. c. 149, s. 148B, an individual contractor is presumed to be a contract employee unless they meet all factors of the three-factor test (below). The department must attach any relevant documentation in order to support independent contractor status.

<b>Three Factor Test and Factors to Consider.</b> Check the appropriate column box for each of the three numbered factors of the test. If the answer to <u>any</u> of the factors below is “FALSE/NO”, then the overall answer should be “NO” and the individual should be a contract employee. Below each of the three test factors are additional factors to consider in determining each respective test factor.	<b>TRUE YES</b>	<b>FALSE NO</b>
<b>1. The individual is free from control and direction in connection with the performance of the service, both under his/her contract for the performance of service and in fact.</b>		
a. The department does not provide instructions to the worker about when, where, and how he or she is to perform the work, does not set the work hours and daily schedule as it would for its employees and the worker is not required to perform the services in a standard or predefined order or sequence set by the department. The department does not provide the same or similar training to the worker to perform the work for the department that it provides to its other employees.		
b. The department does not hire, supervise and pay assistants for the worker or pay for business or traveling expenses of the worker (unless travel is negotiated as a requirement of the contract and costs are negotiated). Any assistance needed by the worker is self-provided since the worker may not supervise department staff.		
c. The work relationship between the department and the worker will not continue beyond the current project/contract. If the individual is continually hired from project to project and maintains an ongoing contractual relationship with the department, the answer to this section is “NO” and the presumption will be that the individual should be a contract employee unless all other factors support independent contractor status.		
d. Work is performed on the department's premises with limited access to department resources only to the extent necessary to perform services and not because the worker does not have available facilities or equipment. The worker furnishes his/her own tools, materials and equipment, relies little on department support resources, and has a significant investment in his/her own facilities.		
e. Worker is required to submit oral or written reports to the department documenting work status because department is not overseeing day-to-day performance.		
<b>2. The service is performed outside the usual course of the business of the employer.</b>		
The services performed by the worker are not integrated into the department's business operations. If the services or work performed are the same or similar as work performed by other state employees, or the department as a whole, the answer to this section is “NO” and the individual will be a contract employee.		
<b>3. The individual is customarily engaged in an independently established trade, occupation, profession or business as services provided for the department.</b>		
The worker does not devote substantially full time to the business of the department. The worker provides services for more than one client at a time or to the general public. If the individual's business is substantially subsidized by a single department with limited funding from other clients, the answer to this section is “NO” and the individual will be a contract employee.		

The department hereby certifies to the best of their knowledge and belief that the individual contract relationship described above qualifies as (select only one):

Contract Employee                      **OR**                       Independent Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Determination of Worker Status for Purposes  
of Federal Employment Taxes and  
Income Tax Withholding**

**For IRS Use Only:  
Case Number:**

**Earliest Receipt Date:**

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

**Note.** If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ▶ \_\_\_\_\_

**Disclosure of Information**

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* on page 6 for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

**Parts I-V.** All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or workers' name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

**Part I General Information**

- This form is being completed by:  Firm  Worker; for services performed \_\_\_\_\_ to \_\_\_\_\_ .  
(beginning date) (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get worker's compensation benefits, or you were audited or are being audited by the IRS). \_\_\_\_\_  
\_\_\_\_\_
- Total number of workers who performed or are performing the same or similar services: \_\_\_\_\_ .
- How did the worker obtain the job?  Application  Bid  Employment Agency  Other (specify) \_\_\_\_\_
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings).** In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ \_\_\_\_\_ .  
If both Form W-2 and Form 1099-MISC were issued or received, explain why. \_\_\_\_\_  
\_\_\_\_\_
- Describe the firm's business. \_\_\_\_\_  
\_\_\_\_\_

**Part I** General Information (continued)

- 7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: \_\_\_\_\_  
 Previous owner's taxpayer identification number: \_\_\_\_\_ Change was a:  Sale  Merger  Acquisition  Reorganization  
 Other (specify) \_\_\_\_\_  
 Description of above change: \_\_\_\_\_  
 \_\_\_\_\_  
 Date of change (MM/DD/YY): \_\_\_\_\_
- 8 Describe the work done by the worker and provide the worker's job title. \_\_\_\_\_  
 \_\_\_\_\_
- 9 Explain why you believe the worker is an employee or an independent contractor. \_\_\_\_\_  
 \_\_\_\_\_
- 10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?  
 Yes  No  N/A  
 If "Yes," what were the dates of the prior service? \_\_\_\_\_  
 If "Yes," explain the differences, if any, between the current and prior service. \_\_\_\_\_  
 \_\_\_\_\_
- 11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. \_\_\_\_\_  
 \_\_\_\_\_

**Part II** Behavioral Control (Provide names and titles of specific individuals, if applicable.)

- 1 What specific training and/or instruction is the worker given by the firm? \_\_\_\_\_  
 \_\_\_\_\_
- 2 How does the worker receive work assignments? \_\_\_\_\_  
 \_\_\_\_\_
- 3 Who determines the methods by which the assignments are performed? \_\_\_\_\_
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? \_\_\_\_\_  
 \_\_\_\_\_
- 5 What types of reports are required from the worker? Attach examples. \_\_\_\_\_  
 \_\_\_\_\_
- 6 Describe the worker's daily routine such as his or her schedule or hours. \_\_\_\_\_  
 \_\_\_\_\_
- 7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. \_\_\_\_\_  
 \_\_\_\_\_
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). \_\_\_\_\_
- 9 Is the worker required to provide the services personally? . . . . .  Yes  No
- 10 If substitutes or helpers are needed, who hires them? \_\_\_\_\_
- 11 If the worker hires the substitutes or helpers, is approval required? . . . . .  Yes  No  
 If "Yes," by whom? \_\_\_\_\_
- 12 Who pays the substitutes or helpers? \_\_\_\_\_
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? . . . . .  Yes  No  
 If "Yes," by whom? \_\_\_\_\_

**Part III Financial Control** (Provide names and titles of specific individuals, if applicable.)

- 1 List the supplies, equipment, materials, and property provided by each party:  
The firm: \_\_\_\_\_  
The worker: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 2 Does the worker lease equipment, space, or a facility? . . . . .  **Yes**  **No**  
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) \_\_\_\_\_
- 3 What expenses are incurred by the worker in the performance of services for the firm? \_\_\_\_\_
- 4 Specify which, if any, expenses are reimbursed by:  
The firm: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 5 Type of pay the worker receives:  Salary  Commission  Hourly Wage  Piece Work  
 Lump Sum  Other (specify) \_\_\_\_\_  
If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. \$ \_\_\_\_\_
- 6 Is the worker allowed a drawing account for advances? . . . . .  **Yes**  **No**  
If "Yes," how often? \_\_\_\_\_  
Specify any restrictions. \_\_\_\_\_
- 7 Whom does the customer pay? . . . . .  Firm  Worker  
If worker, does the worker pay the total amount to the firm?  **Yes**  **No** If "No," explain. \_\_\_\_\_
- 8 Does the firm carry workers' compensation insurance on the worker? . . . . .  **Yes**  **No**
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? \_\_\_\_\_
- 10 Does the worker establish the level of payment for the services provided or the products sold? . . . . .  **Yes**  **No**  
If "No," who does? \_\_\_\_\_

**Part IV Relationship of the Worker and Firm**

- 1 Please check the benefits available to the worker:  Paid vacations  Sick pay  Paid holidays  
 Personal days  Pensions  Insurance benefits  Bonuses  
 Other (specify) \_\_\_\_\_
- 2 Can the relationship be terminated by either party without incurring liability or penalty? . . . . .  **Yes**  **No**  
If "No," explain your answer. \_\_\_\_\_
- 3 Did the worker perform similar services for others during the time period entered in Part I, line 1? . . . . .  **Yes**  **No**  
If "Yes," is the worker required to get approval from the firm? . . . . .  **Yes**  **No**
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. \_\_\_\_\_
- 5 Is the worker a member of a union? . . . . .  **Yes**  **No**
- 6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. \_\_\_\_\_
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? \_\_\_\_\_
- 8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? \_\_\_\_\_
- 9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? \_\_\_\_\_
- 10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? \_\_\_\_\_

**Part V For Service Providers or Salespersons.** Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? .....
- 2 Who provides the worker with leads to prospective customers? .....
- 3 Describe any reporting requirements pertaining to the leads. ....
- 4 What terms and conditions of sale, if any, are required by the firm? .....
- 5 Are orders submitted to and subject to approval by the firm? . . . . .  **Yes**  **No**
- 6 Who determines the worker's territory? .....
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? . . . . .  **Yes**  **No**  
 If "Yes," whom did the worker pay? .....
- 8 If "Yes," how much did the worker pay? . . . . . \$ .....
- 8 Where does the worker sell the product (for example, in a home, retail establishment)? .....
- 9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. ....
- 10 Does the worker sell life insurance full time? . . . . .  **Yes**  **No**
- 11 Does the worker sell other types of insurance for the firm? . . . . .  **Yes**  **No**  
 If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance . . . . . \_\_\_\_\_ %
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation . . . . . \_\_\_\_\_ %
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? . . . . .  **Yes**  **No**  
 Describe the merchandise and state whether it is equipment installed on the customers' premises. ....

**Sign Here** ▶ Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

▶ \_\_\_\_\_ Title ▶ \_\_\_\_\_ Date ▶ \_\_\_\_\_  
 Type or print name below signature.

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose

Firms and workers file Form SS-8 to request a determination of the status of a worker for purposes of federal employment taxes and income tax withholding.

A Form SS-8 determination may be requested only in order to resolve federal tax matters. If Form SS-8 is submitted for a tax year for which the statute of limitations on the tax return has expired, a determination letter will not be issued. The statute of limitations expires 3 years from the due date of the tax return or the date filed, whichever is later.

The IRS does not issue a determination letter for proposed transactions or on hypothetical situations. We may, however, issue an information letter when it is considered appropriate.

### Definition

**Firm.** For the purposes of this form, the term "firm" means any individual, business enterprise, organization, state, or other entity for which a worker has performed services. The firm may or may not have paid the worker directly for these services.



*If the firm was not responsible for payment for services, be sure to enter the name, address, and employer identification number of the payer on the first page of Form SS-8, below the identifying information for the firm and the worker.*

### The Form SS-8 Determination Process

The IRS will acknowledge the receipt of your Form SS-8. Because there are usually two (or more) parties who could be affected by a determination of employment status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. Some or all of the information provided on this Form SS-8 may be shared with the other parties listed on page 1. The case will be assigned to a technician who will review the facts, apply the law, and render a decision. The technician may ask for additional information from the requestor, from other involved parties, or from third parties that could help clarify the work relationship before rendering a decision. The IRS will generally issue a formal determination to the firm or payer (if that is a different entity), and will send a copy to the worker. A determination letter applies only to a worker (or a class of workers) requesting it, and the decision is binding on the IRS. In certain cases, a formal determination will not be issued. Instead, an information letter may be issued. Although an information letter is advisory only and is not binding on the IRS, it may be used to assist the worker to fulfill his or her federal tax obligations.

Neither the Form SS-8 determination process nor the review of any records in connection with the determination constitutes an examination (audit) of any federal tax return. If the periods under consideration have previously been examined, the Form SS-8 determination process will not constitute a reexamination under IRS reopening procedures. Because this is not an examination of any federal tax return, the appeal rights available in connection with an examination do not apply to a Form SS-8 determination. However, if you disagree with a determination or you have additional information concerning the work relationship that you believe was not previously considered, you may request that the determining office reconsider the determination.

## Completing Form SS-8

Answer all questions as completely as possible. Attach additional sheets if you need more space. Provide information for **all** years the worker provided services for the firm. Determinations are based on the entire relationship between the firm and the worker. Also indicate if there were any significant changes in the work relationship over the service term.

Additional copies of this form may be obtained on IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

### Fee

There is no fee for requesting a Form SS-8 determination letter.

### Signature

Form SS-8 must be signed and dated by the taxpayer. A stamped signature will not be accepted.

The person who signs for a corporation must be an officer of the corporation who has personal knowledge of the facts. If the corporation is a member of an affiliated group filing a consolidated return, it must be signed by an officer of the common parent of the group.

The person signing for a trust, partnership, or limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

### Where To File

Send the completed and signed Form SS-8 to the address below for the firm's location. Faxed, photocopied, or electronic versions of Form SS-8 are not acceptable for the initial request for the Form SS-8 determination. However, only for cases involving federal agencies, send Form SS-8 to the Internal Revenue Service, Attn: CC:CORP:T:C, Ben Franklin Station, P.O. Box 7604, Washington, DC 20044. **Do not submit Form SS-8 with your tax return as that will delay processing time.**

#### Firm's location:

#### Send to:

Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, American Samoa, Guam, Puerto Rico, U.S. Virgin Islands

Internal Revenue Service  
Form SS-8 Determinations  
P.O. Box 630  
Stop 631  
Holtsville, NY 11742-0630

Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, all other locations not listed

Internal Revenue Service  
Form SS-8 Determinations  
40 Lakemont Road  
Newport, VT 05855-1555

## Instructions for Workers

If you are requesting a determination for more than one firm, complete a separate Form SS-8 for each firm.



*Form SS-8 is not a claim for refund of social security and Medicare taxes or federal income tax withholding.*

If the IRS determines that you are an employee, you are responsible for filing an amended return for any corrections related to this decision. A determination that a worker is an employee does not necessarily reduce any current or prior tax liability. For more information, call 1-800-829-1040.

**Time for filing a claim for refund.** Generally, you must file your claim for a credit or refund within 3 years from the date your original return was filed or within 2 years from the date the tax was paid, whichever is later.

**Filing Form SS-8 does not prevent the expiration of the time in which a claim for a refund must be filed.** If you are concerned about a refund, and the statute of limitations for filing a claim for refund for the year(s) at issue has not yet expired, you should file Form 1040X, Amended U.S. Individual Income Tax Return, to protect your statute of limitations. File a separate Form 1040X for each year.

On the Form 1040X you file, do not complete lines 1 through 22 on the form. Write "Protective Claim" at the top of the form, sign and date it. In addition, enter the following statement in Part III: "Filed Form SS-8 with the Internal Revenue Service Office in (Holtsville, NY; Newport, VT; or Washington, DC; as appropriate). By filing this protective claim, I reserve the right to file a claim for any refund that may be due after a determination of my employment tax status has been completed."

**Filing Form SS-8 does not alter the requirement to timely file an income tax return.** Do not delay filing your tax return in anticipation of an answer to your Form SS-8 request. In addition, if applicable, do not delay in responding to a request for payment while waiting for a determination of your worker status.

## Instructions for Firms

If a **worker** has requested a determination of his or her status while working for you, you will receive a request from the IRS to complete a Form SS-8. In cases of this type, the IRS usually gives each party an opportunity to present a statement of the facts because any decision will affect the employment tax status of the parties. Failure to respond to this request will not prevent the IRS from issuing a determination letter based on the information he or she has made available so that the worker may fulfill his or her federal tax obligations. However, the information that you provide is extremely valuable in determining the status of the worker.

If you are requesting a determination for a particular class of worker, complete the form for one individual who is representative of the class of workers whose status is in question. If you want a written determination for more than one class of workers, complete a separate Form SS-8 for one worker from each class whose status is typical of that class. A written determination for any worker will apply to other workers of the same class if the facts are not materially different for these workers. Please provide a list of names and addresses of all workers potentially affected by this determination.

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker under section 530 of the 1978 Revenue Act. However, this relief provision cannot be considered in conjunction with a Form SS-8 determination because the determination does not constitute an examination of any tax return. For more information regarding section 530 of the 1978 Revenue Act and to determine if you qualify for relief under this section, visit [IRS.gov](http://IRS.gov).

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on Form SS-8 to carry out the Internal Revenue laws of the United States. This information will be used to determine the employment status of the worker(s) described on the form. Subtitle C, Employment Taxes, of the Internal Revenue Code imposes employment taxes on wages, including income tax withholding. Sections 3121(d), 3306(a), and 3401(c) and (d) and the related regulations define employee and employer for purposes of employment taxes imposed under Subtitle C. Section 6001 authorizes the IRS to request information needed to determine if a worker(s) or firm is subject to these taxes. Section 6109 requires you to provide your taxpayer identification number. Neither workers nor firms are required to request a status determination, but if you choose to do so, you must provide the information requested on this form. Failure to provide the requested information may prevent us from making a status determination. If any worker or the firm has requested a status determination and you are being asked to provide information for use in that determination, you are not required to provide the requested information. However, failure to provide such information will prevent the IRS from considering it in making the status determination. Providing false or fraudulent information may subject you to penalties. Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the IRS to disclose or give the information shown on your tax return to others as described in the Code. Routine uses of this information include providing it to the Department of Justice for use in civil and criminal litigation, to the Social Security Administration for the administration of social security programs, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for the administration of their tax laws. We also may disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. We may provide this information to the affected worker(s), the firm, or payer as part of the status determination process.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

The time needed to complete and file this Form SS-8 will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 23 hrs., 55 min.; Learning about the law or the form, 1 hr., 48 min.; Preparing the form, 5 hrs., 03 min.; and Sending the form to the IRS, 48 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this address. Instead, see *Where To File* on page 5.