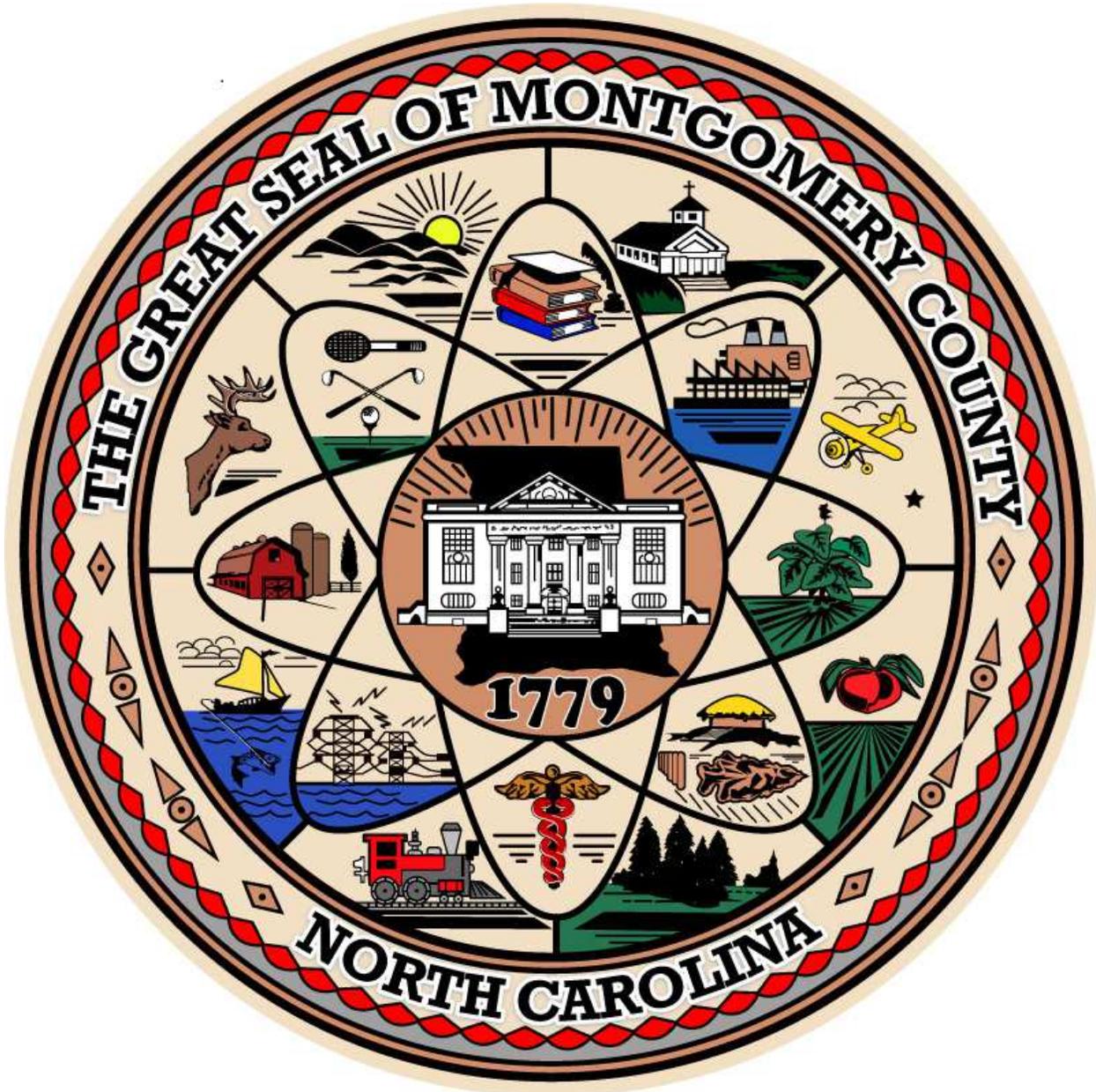


COUNTY OF MONTGOMERY, NORTH CAROLINA

INSTRUCTION MANUAL



PAYEES/VENDORS

EFFECTIVE JANUARY 1, 2018

COUNTY OF MONTGOMERY, NORTH CAROLINA  
INSTRUCTION MANUAL: VENDORS AND CONTRACTS  
EFFECTIVE JANUARY 1, 2019

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**REFERENCE THE COUNTY'S "PAYEE" PACKAGE**

1. INSTRUCTIONS TO PAYEES
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7. IRS FORM SS-8: DETERMINATION OF WORKER STATUS--VENDOR OR EMPLOYEE (a.k.a. THE "CHECKLIST")

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Article I. Before Creating an Obligation

Prior to ordering goods or services, a proper relationship between the County and the vendor must be established. The federal government and the courts have established guidelines for treating workers as employees or vendors. To comply, Department Managers and other employees responsible for selecting workers should understand the procedures described herein. These actions also ensure procedures are being followed to issue purchase orders and payment in a timely manner.

A. Legal Name and Status of County

Regardless of the department entering into the contract, the County's legal name is "County of Montgomery, North Carolina." Most departments operate under a different name and this name is typically referred to as the "trade name" or "doing business as" name. For example, Montgomery County Department of Social Services and Montgomery County Department of Health are "trade names." When mentioning the "doing business as" ("d/b/a") name for the first time in any contract, agreement, or attachments to the contract, mention the legal name first. For instance, the wording could be "County of Montgomery, North Carolina, d/b/a Montgomery County Sheriff's Office."

Just as the County requests the taxpayer/employer identification number of vendors, some County vendors request the County's taxpayer/employer identification number. Typically, this request is fulfilled through completion of an IRS Form W-9. The IRS Form W-9 requests the entity's legal name, the taxpayer/employer identification number, the "doing business as" name, the mailing address, and the legal structure. For help fulfilling these requests, please forward any questions concerning this topic to Belinda Stuart, Accountant, in the Department of Administration--Finance Office.

The County's taxpayer/employer identification number is 56-6000321 and main DUNS number is 02-538-4603. Although the County has only one employer identification number, the County may have numerous DUNS numbers for each location and different functions at the same location. If you setup a DUNS number for your office, you should associate this new DUNS number with the County's main DUNS number and share the information with Belinda Stuart, Accountant, in the Department of Administration--Finance Office.

The County is exempt from federal and state income taxes, federal unemployment taxes, certain excise taxes on motor fuel and tires for vehicles, and all local property taxes within the State of North Carolina. However, the County must pay sales and use taxes charged by vendors under North Carolina laws and the County cannot hire vendors that do not comply with these laws. Therefore, the County is NOT exempt from sales and use taxes in NC and may not complete any forms that suggest otherwise.

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**B. Vendor Information**

Before placing an order for goods or services with any business, a current "Payee Information Profile" must be filed with Belinda Stuart, Accountant, in the Department of Administration--Finance Office. The County's "Payee Information Profile" serves as a substitute for the IRS Form W-9. Through the financial system, one can verify that a business has successfully filed a "Payee Information Profile" by searching through active payees/vendors by name.

When viewing vendors on the Edmunds MCSJ Finance program, be sure that you are using a vendor with a status of "Active".

Vendors with a status of "Inactive" are no longer active on the system and will have to complete a new "Payee Information Profile" and other payee paperwork. The status of "Inactive" will be assigned to those vendors who do not return a properly completed "Payee Information Profile" within 60 months of the receipt of the previous properly completed form. The status change will also be invoked on other vendors with whom the County has ceased to conduct business and vendors that have ceased operations (i.e. closed).

Vendors that have a status of "No Certificate" will have to abide by certain procedures before we can use them. The status of "No Certificate" will be assigned to those vendors that have a business in N.C. but are not registered with the State to collect N.C. sales taxes. These vendors must agree to "pass-along" N.C. sales taxes to us via completion of a separate "Vendor Sales Tax Certificate" form with each invoice that is submitted. These vendors should be given the "Vendor Sales Tax Certificate" form when the work is awarded. In effect, by completing this form, the vendor is passing along the N.C. sales taxes to the County. No markup on charges for materials and related N.C. sales taxes are permitted. Since the County is required to have proof of paid N.C. sales taxes, this form would serve as such proof for N.C. sales taxes paid to this vendor. If the vendor is not willing to use the form to pass the N.C. sales taxes to the County, then we cannot award any work that may require N.C. sales taxes to be charged under rules regarding N.C. sales taxes.

If the business or individual is not already setup as a payee/vendor, ask business or individual to complete and submit the "Payee Information Profile". Also, please contact Belinda Stuart, Accountant, in the Department of Administration--Finance Office to identify that you desire that the business or individual be setup as a payee/vendor. This process serves to minimize receipt of bogus requests. Once confirmed that the business or individual is properly setup as an active vendor (by assignment of a vendor ID), orders, purchases, and payments may be made.

At anytime, you may access information on Edmunds MCSJ Finance as to the status of a vendor. Still, each December, Finance will provide a list of vendors that are classified as "Inactive" and a list of vendors with a status of "No Certificate".

Soon after January 1, 2019, the County hopes to offer electronic payment as an alternative to check payment. If interested, vendors should complete the "Payee Payment Preference

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Indication” and submit with the “Payee Information Profile”. Email notification will be sent prior to each electronic payment. Without an email address, check payments will continue to be sent.

If the prospective vendor will provide a service and either operates the business 1) under a social security number, 2) on County premises, and/or 3) subject to supervision by a County employee, the prospective vendor should also complete an IRS Form SS-8, “Determination of Worker Status” – Vendor or Employee (aka “checklist”). Please refer to instructions below concerning this topic.

C. Worker Status Determination--Vendor or Employee

In this section, any reference to workers or individuals should be understood to refer to any prospective vendor that will provide a service and operates the business under a social security number, on County premises, and/or subject to supervision by a County employee.

Before creating an obligation to pay an individual for services, determination must be made as to whether the worker should be treated as an employee or as a vendor (also called “independent contractor”). In general, such workers that perform work regularly through the year should be treated as employees and such workers that perform work periodically during the year may be treated as vendors. Various exceptions exist.

Furthermore, established businesses can usually be treated as vendors. In certain cases, even a worker for an established business (that operates under the worker’s social security number, on County premises, and/or subject to supervision by a County employee) may be more properly classified as an employee of the County.

To help with the determination and provide proof that the choice was not made haphazardly, complete IRS Form SS-8 "Determination of Worker Status" – Vendor or Employee (hereinafter referred to as "checklist"). Before creating any obligation to such workers, the following actions must occur:

1. the worker and department staff should cooperate to complete the checklist;
2. the checklist should be submitted for approval by Finance staff; and
3. to determine whether the worker should be treated as an employee or as a vendor, Finance staff will cooperate with the worker, department staff, and others needed.

Complete one checklist for each prospective vendor and each type of service. Attach a separate page to elaborate and share information on any responses. Also, attach the “Payee Information Profile” for each potential new vendor/independent contractor. As needed, refer to instructions from the IRS regarding IRS Form SS-8 (instructions available at [www.irs.gov](http://www.irs.gov)). For complicated situations, Finance may submit the IRS Form SS-8 to IRS for final determination.

Either when the service being provided changes substantially or when the contract is for a new service, the established vendor should complete a new checklist. Also, a new checklist should be provided at least every five years.

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As we begin collecting checklists, when renewing a service for a new fiscal year and the checklist has been completed within the past four fiscal years, please verify that Belinda Stuart, Accountant, with the Department of Administration--Finance Office has a copy of the checklist (if needed). Consult with Belinda Stuart, Accountant, or C.D. Crepps, County Finance Director, if you need assistance to properly complete the checklist. Also, feel free to speak with Renee Jones, Human Resources Director, about any issues regarding the hiring process for employees.

Refer to instructions in Article IV within this manual concerning this topic, the “Worker Status Determination – Vendor or Employee,” and IRS Form SS-8.

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**Article II. Vendor Information**

To enhance our ability to efficiently process the County's purchases of goods and services, the County requires a properly completed "Payee Information Profile" and other documents, as needed. This form serves as a substitute for IRS Form W-9. Vendors should also refer to the 'Vendor General Terms and Conditions'. The "payee package", that contains all of these documents, is on the County's website.

The County requests that our suppliers and contractors provide their taxpayer/employer identification number via completion of the County's "Payee Information Profile". The County uses this information to furnish annual tax forms to certain organizations and copies to the IRS after the end of each calendar year, which are actions required by the IRS.

The County is exempt from federal and state income taxes, federal unemployment taxes, certain excise taxes on motor fuel and tires for vehicles, and all local property taxes within the State of North Carolina. However, the County must pay sales and use taxes charged by vendors under North Carolina laws and the County cannot hire vendors that do not comply with these laws. Therefore, the County is NOT exempt from sales and use taxes in NC and may not complete any forms that suggest otherwise.

A. Federal Taxpayer/Employer Identification Number (EIN)

To make sure businesses comply with federal tax laws, the IRS monitors tax filings and payments by using a numerical system to identify taxpayers. A unique 9-digit taxpayer/employer identification number (EIN) is assigned by the IRS to all corporations, partnerships, and some sole proprietors. EINs are used by employers, sole proprietors, corporations, partnerships, nonprofit associations, trusts, estates of decedents, government agencies, certain individuals, and other business entities. Businesses needing an EIN must apply for a number and use it throughout the life of the business on all tax returns, payments, and reports. The EIN can only be used for business purposes; it does not replace an individual's social security number (SSN) that is used for personal purposes.

A business may apply for an EIN by completing the IRS Form SS-4 and submitting the information by telephone (1-800-829-4933), fax (631-447-8960), mail (EIN Operation, Internal Revenue Service Center, PO Box 9003, Holtsville, NY 11742-9003), or Internet ([www.irs.gov](http://www.irs.gov)). An EIN will be issued immediately if the information is submitted by telephone or through the Internet. If the information is submitted via fax, the business should receive an EIN within a week. By mail, the business should receive a response within 6 weeks.

Obtain more information about the EIN from IRS Publication 1635 Understanding Your Employer Identification Number (EIN). Visit [www.irs.gov](http://www.irs.gov), then select "More Forms and Publications", and choose "Publication Number". Next, search the list and highlight "Publ 1635 Understanding Your Employer Identification Number (EIN)". Select the button to "Retrieve Selected Files" and open the PDF file. You can then choose to read the file through your web browser, download the file, and/or print the file.

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B. Vendor General Terms and Conditions

All vendors are subject to the “Vendor General Terms and Conditions” included as part of the “payee package”. This document acknowledges the vendor as an independent business and affirms many of the responsibilities of an independent business. The document mentions some of the rights that the County has in the relationship, such as the right to monitor the vendor’s activities related to its services to the County and the expectation that confidential and sensitive personal information will be properly safeguarded. Many other various expectations are also listed.

C. Withholding From Individuals With ITINs Instead of SSNs

The County will withhold four percent (4%) of compensation other than wages from payments of more than \$1,500 per calendar year to individuals with an Individual Taxpayer Identification Number (ITIN), to be remitted to the NC Department of Revenue along with employee withholdings of state income taxes. ITINs are issued by the Internal Revenue Service to people who are not eligible to receive social security numbers (SSNs). ITINs typically start with the number 9 and are formatted similar to the social security number (9xx-xx-xxxx).

D. Withholding From Nonresidents for Certain Personal Services

Under the state income tax withholding requirements of N.C.G.S. 105-163.1(2) and 105-163.3, the County will withhold four percent (4%) of compensation other than wages from certain payments to non-resident individuals and entities performing certain personal services in the State, to be remitted to the NC Department of Revenue along with employee withholdings of state income taxes. Non-resident individuals or entities that receive compensation other than wages for any personal service in connection with a performance, an entertainment, an athletic event, a speech, or the production and creation of a film, radio, or television program are subject to the four percent (4%) withholding requirement. When payment for such personal services reaches more than one thousand five hundred dollars (\$1,500) in a calendar year, the County is required to withhold the appropriate amount from the compensation paid.

**EXCEPTIONS**

Without the required information or documentation noted below, the County should subject payments to the withholding requirements. Additional information regarding applicability and remittance of the withholdings may be obtained from the North Carolina Department of Revenue by requesting a copy of PD-98-3 from the Personal Taxes Division, telephone 919-733-3565.

- 1) No tax is required to be withheld if the entity is a corporation or a limited liability company that has obtained a certificate of authority from the Secretary of State. However, the County must obtain from the payee and retain in its records the entity’s identification number issued by the Secretary of State.

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- 2) If the entity is a partnership, no withholding is required if the partnership has a permanent place of business in North Carolina. In this case, the County must obtain from the partnership and retain in its records the partnership's address and taxpayer identification number.
  
- 3) No tax is required to be withheld from personal services income paid to an individual who is a) either an ordained or licensed member of the clergy and b) either does such work for a church (or any religious denomination) or who is a resident of North Carolina.
  
- 4) For residents of North Carolina who perform personal services, the County must obtain and retain in its records the worker's address and social security number.
  
- 5) If the entity is a non-profit corporation that is exempt from North Carolina corporate income tax under General Statute 105-130.11 or is exempt from federal income tax under the Internal Revenue Code, the County must document the tax-exempt status of the entity, usually by obtaining a copy of the entity's federal determination letter of tax exemption or a copy of a letter of tax exemption from the North Carolina Department of Revenue.

E. Backup Withholding

If the IRS notifies a vendor that it is subject to backup withholding, the County should withhold 28% of payments due to the vendor and send those withholdings to the Internal Revenue Service in the same check-write that payment is made to the vendor. Report backup withholding annually via IRS Form 945. Also, see IRS Publication 1281 for more details on backup withholding. Refer to IRS Publication 15, section 11, for deposit requirements.

For payees of the County, backup withholding will apply if:

1. the payee fails to furnish his or her correct taxpayer identification number (TIN); or
2. the IRS sends notification (usually via CP2100 or CP2100A Notice) to impose backup withholding because the payee furnished an incorrect TIN.

On IRS Form W-9, the payee may indicate if the payee has applied for a TIN by noting "Applied For" in the TIN block and by signing the form. This form then becomes an "awaiting-TIN" certificate, and the payee has 60 days to obtain a TIN and furnish it. For nonemployee compensation, immediately begin backup withholding. Other payees may not be subject to backup withholding during this waiting period.

The County is obligated to request the taxpayer identification number at least three times to avoid IRS penalties during each of the first three calendar years during which the County pays the payee/vendor. Also, the County must request in writing the taxpayer identification number within 15 days of receiving notice from the IRS of an invalid taxpayer identification number. The outer mailing envelope should be marked "IMPORTANT TAX RETURN DOCUMENT ENCLOSED". Allow 30 days for response. Begin backup withholding immediately, continue backup withholding until validation received via new social security card or IRS Letter 147C, and stop backup withholding within 30 days after validation received.

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Generally, individuals (including sole proprietors) and partnerships are not exempt from backup withholding. Yet, some payees are exempt from backup withholding. Corporations are exempt from backup withholding for certain payments. However, the following payments made to a corporation and reportable on IRS Form 1099-MISC are not exempt from backup withholding: 1) medical and health care payments, 2) attorneys' fees, and 3) other proceeds paid to an attorney.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The IRS Information Reporting Program Centralized Customer Service may be reached toll-free via 866-455-7438, hours 8:30a to 4:30p, Mon to Fri, Eastern Time or by email to [mccirp@irs.gov](mailto:mccirp@irs.gov).

TIN matching services are available on [irs.gov](http://irs.gov). More information is available via IRS Publication 2108A. The Social Security Number Verification Service is also available online from the Social Security Administration.

For additional information, see IRS Form W-9 and the separate IRS instructions for the Requester of IRS Form W-9.

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**Article III. Reporting on IRS Form 1099-MISC**

The IRS instructs businesses to report certain payments on IRS Form 1099-MISC only when payments are made in the course of a trade or business. Payments by nonprofit organizations and payments by federal, state, or local government agencies are reportable. Personal payments are not reportable.

A. Payee Information Profile

To properly setup a vendor in the financial system, information about the vendor and the vendor's offerings are needed. Vendors that provide goods and materials only, no services, will usually not receive an IRS Form 1099-MISC.

Vendors that provide any service will be required to complete the "Payee Information Profile".

Into the County's financial system, Finance will enter the full name and address in the section provided. If payments will be or have been made to more than one recipient or if the account is in more than one name, Finance will enter on the first name line the name of the recipient whose EIN is first shown on the return. When possible, Finance will enter the names of any other individual recipients in the area below the first line.

For vendors operating as sole proprietors, Finance will enter the individual's name on the first name line; on the second name line, Finance will enter the "doing business as (d/b/a)" name. (Finance will not enter only the d/b/a name.) For the EIN, Finance will enter the individual's SSN, at the preference of the IRS. The EIN of the business (sole proprietorship) is acceptable.

For vendors operating as a limited liability company (LLC), Finance will enter the payment recipient's name only on the first name line and the LLC's name on the second name line. For the EIN, request and enter the owner's SSN (or EIN, if applicable) when the LLC is taxed as a sole proprietor. If the LLC is taxed as a corporation, partnership, etc., request and enter the entity's EIN.

B. Payments to Payees

Per IRS instructions, the County will annually complete an IRS Form 1099-MISC, Miscellaneous Income, for each person to whom has been paid at least \$600 during the calendar year in any of the following types of income:

1. services performed by someone who is not an employee, including parts & materials (box 7);
2. rents (box 1);
3. payments to an attorney (see "Payments to Attorneys");
4. prizes and awards (see instructions for boxes 3 and 7);
5. any fishing boat proceeds (box 5).
6. medical and health care payments (box 6);
7. cash payments for fish (or other aquatic life) purchased from anyone engaged in the trade or business of catching fish (box 7);

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8. generally, the cash paid from a notional principal contract to an individual, partnership, or estate (box 7);
9. crop insurance proceeds (box 10); or
10. other income payments (box 3);

More complete guidance on types of income to report in each box is found in the IRS instructions for IRS Form 1099-MISC.

C. Withholding of Income Taxes

Withheld federal income taxes should be reported in box 4 on IRS Form 1099-MISC. Also, the County must file IRS Form 1099-MISC for each person from whom the County has withheld any federal income taxes (report in box 4) under the backup withholding rules regardless of the amount of the payment.

D. Exceptions

Some payments do not have to be reported on IRS Form 1099-MISC, although they may be taxable to the recipient. Payments for which an IRS Form 1099-MISC is not required include all of the following:

1. payments for merchandise, telegrams, telephone, freight, storage, and similar items;
2. fees paid to informers -- payments to an informer as an award, fee, or reward for information about criminal activity does not have to be reported if the payment is made either by a government agency or by a nonprofit organization exempt from tax under section 501(c)(3) that makes the payment to further the charitable purpose of lessening the burdens of government;
3. wages paid to employees (report on IRS Form W-2, Wage and Tax Statement);
4. business travel allowances paid to employees (may be reportable on IRS Form W-2);
5. military differential wage payments made to employees while they are on active duty in the Armed Forces or other uniformed services (report on IRS Form W-2);
6. cost of current life insurance protection (report on IRS Form W-2 or IRS Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, etc.);
7. scholarship or fellowship grants (do not use IRS Form 1099-MISC) - such grants that are taxable to the recipient because they are paid for teaching, research, or other services as a condition for receiving the grant are considered wages and must be reported on IRS Form W-2; other taxable scholarship or fellowship payments (to a degree or non-degree candidate) do not have to be reported to the IRS on any form;
8. payments to a tax-exempt organization including tax-exempt trusts (IRAs, HSAs, Archer MSAs, and Coverdell ESAs), the United States, a state, the District of Columbia, a U.S. possession, or a foreign government;
9. canceled debt -- a canceled debt is not reportable on IRS Form 1099-MISC; canceled debts must be reported on IRS Form 1099-C, Cancellation of Debt, by financial institutions, credit unions, federal government agencies, certain agencies connected with the federal government, and an organization where the lending of money (such as finance and credit card companies) is a significant trade or business (see the IRS instructions for IRS Forms 1099-A and 1099-C).

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10. payments reportable on IRS Form 1099-K -- payments made with a credit card or payment card and certain other types of payments, including third party network transactions, must be reported on IRS Form 1099-K by the payment settlement entity and are not subject to reporting on IRS Form 1099-MISC (see the separate IRS instructions for IRS Form 1099-K);
11. payments made to or for homeowners from the HFA Hardest Hit Fund or the Emergency Homeowners' Loan Program or similar state program (report on IRS Form 1098-MA);
12. generally, payments to a corporation (including a limited liability company (LLC) that is treated as a C- or S-Corporation) (see "Reportable Payments to Corporations");
13. payments of rent to real estate agents -- yet, the real estate agent must use IRS Form 1099-MISC to report the rent paid over to the property owner (see the instructions for box 1);
14. difficulty-of-care payments -- do not use IRS Form 1099-MISC to report difficulty-of-care payments that are excludable from the recipient's gross income; difficulty-of-care payments to foster care providers are not reportable if paid for fewer than 11 children under age 19; amounts paid for more than 10 children or more than five other individuals are reportable on IRS Form 1099-MISC;

E. Payments to Attorneys

On IRS Form 1099-MISC, the County should report gross proceeds paid to attorneys. The term attorney includes a law firm or other provider of legal services. Attorneys' fees of \$600 or more paid are reportable in box 7 of IRS Form 1099-MISC. And, report in box 14 payments that: 1) total \$600 or more, 2) are not reportable in box 7, and 3) are made to an attorney in connection with legal services, for example, as in a settlement agreement,

The exemption from reporting payments made to corporations does not apply to payments for legal services. Therefore, you must report attorneys' fees (in box 7) and other proceeds (in box 14) to corporations that provide legal services.

However, these rules do not apply to wages paid to attorneys that are reportable on IRS Form W-2 or to profits distributed by a partnership to its partners that are reportable on:

1. Schedule K-1 (IRS Form 1065), Partner's Share of Income, Deductions, Credits, etc., or
2. Schedule K-1 (IRS Form 1065-B), Partner's Share of Income (Loss) From an Electing Large Partnership.

F. Reportable Payments to Corporations

The following payments made to corporations generally must be reported on IRS Form 1099-MISC:

1. attorneys' fees (box 7);
2. other proceeds paid to an attorney (box 14);
3. medical and health care payments (box 6);
4. fish purchases for cash (box 7);
5. substitute payments in lieu of dividends or tax-exempt interest (box 8); and
6. payments by a federal executive agency for services (box 7).

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G. Special Situations

1. Independent contractor or employee.

Generally, you must report payments to independent contractors on IRS Form 1099-MISC in box 7. See the instructions for box 7.

2. Employee business expense reimbursements.

Do not use IRS Form 1099-MISC to report employee business expense reimbursements. Report payments made to employees under a non-accountable plan as wages on IRS Form W-2. Generally, payments made to employees under an accountable plan are not reportable on IRS Form W-2, except in certain cases when you pay a per diem or mileage allowance. For more information, see the IRS instructions for IRS Forms W-2 and W-3 and IRS Pub. 463, Travel, Entertainment, Gift, and Car Expenses. To report reimbursements for employee moving expense on IRS Form W-2, see the IRS instructions for IRS Forms W-2 and W-3.

3. Deceased employee's wages.

If an employee dies during the year, you must report the accrued wages, vacation pay, and other compensation paid after the date of death. If you made the payment in the same year the employee died, you must withhold social security and Medicare taxes on the payment and report them only as social security and Medicare wages on the employee's IRS Form W-2 to ensure that proper social security and Medicare credit is received. On the IRS Form W-2, show the payment as social security wages (box 3) and Medicare wages and tips (box 5) and the social security and Medicare taxes withheld in boxes 4 and 6; do not show the payment in box 1 of IRS Form W-2. If you made the payment after the year of death, do not report it on IRS Form W-2, and do not withhold social security and Medicare taxes.

Whether the payment is made in the year of death or after the year of death, you also must report the payment to the estate or beneficiary on IRS Form 1099-MISC. Report the payment in box 3. Enter the name and TIN of the payment recipient on IRS Form 1099-MISC. For example, if the recipient is an individual beneficiary, enter the name and social security number of the individual; if the recipient is the estate, enter the name and employer identification number of the estate. The general backup withholding rules apply to this payment.

Death benefits from nonqualified deferred compensation plans or section 457 plans paid to the estate or beneficiary of a deceased employee are reportable on IRS Form 1099-MISC. Do not report these death benefits on IRS Form 1099-R. However, if the benefits are from a qualified plan, report them on IRS Form 1099-R. See the Instructions for IRS Forms 1099-R and 5498.

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4. Transit passes and parking for independent contractors.

Although you cannot provide qualified transportation fringes to independent contractors, the working condition and de minimis fringe rules for transit passes and parking apply to independent contractors. Tokens or fare-cards that enable an independent contractor to commute on a public transit system (not including privately operated van pools) are excludable from the independent contractor's gross income and are not reportable on IRS Form 1099-MISC if their value in any month is \$21 or less. However, if the value of a pass provided in a month is greater than \$21, the full value is includible in gross income and is reportable on IRS Form 1099-MISC. The value of parking may be excludable from an independent contractor's gross income, and, therefore, not reportable on IRS Form 1099-MISC if certain requirements are met. See Regulations section 1.132-9(b), Q/ A-24.

5. Directors' fees.

You must report directors' fees and other remuneration, including payments made after retirement, in box 7 on IRS Form 1099-MISC in the year paid.

6. Escrow agent; construction project.

When an escrow agent maintains owner-provided funds in an escrow account for a construction project, performs management and oversight functions relating to the construction project, and makes payments for the owner and the general contractor, the escrow agent must file IRS Form 1099-MISC for reportable payments of \$600 or more. This requirement applies whether or not the escrow agent is a bank. If the contractor is the borrower of the funds, do not report on IRS Form 1099-MISC any loan payments made to the contractor/borrower.

7. State or local sales taxes.

If state or local sales taxes are imposed on the service provider and you (as the buyer) pay them to the service provider, report them on IRS Form 1099-MISC as part of the reportable payment. However, if sales taxes are imposed on you (as the buyer) and collected from you by the service provider, do not report the sales taxes on IRS Form 1099-MISC.

H. Annual Filing Requirements

To the IRS, report backup withholding on IRS Form 945, Annual Return of Withheld Federal Income Tax. Generally, file IRS Form 945 by February 1. For more information, including the deposit requirements for IRS Form 945, see the separate IRS instructions for IRS Form 945 and Circular E, Employer's Tax Guide (Pub. 15).

Also, to the recipient, report backup withholding and the amount of the payment on IRS Form 1099-MISC even if the amount of the payment is less than the amount for which an information return is normally required.

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Generally, the due date for furnishing IRS Form 1099-MISC to recipients is January 31. However, if amounts are reported in box 8 or 14, the due date for furnishing IRS Form 1099-MISC to recipients is February 15.

When filing electronically to the IRS, the due date for furnishing IRS Form 1099-MISC is March 31. However, use February 28 as due date and use IRS Form 1096 when filing on paper.

**I. More Information**

More information is available in the IRS instructions for IRS Form 1099-MISC and in the IRS general instructions for all IRS Form 1099s.

The IRS instructions for IRS Form 1099-MISC should be reviewed annually. As needed, the County's instructions and processes should be changed based on changes made to the IRS instructions.

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**Article IV. Worker Status Determination – Vendor or Employee**

Government employers hire vendors, such as independent contractors and contract employees, to perform certain work. Vendors do NOT receive overtime pay, FICA contributions, employee benefits (such as medical coverage and contributions to retirement plans), or workers' compensation coverage. Although classifying a worker as a vendor, rather than as an employee, can result in significant savings for the County, misclassifying an employee as a vendor can prove very expensive when federal and state agencies require the County to pay penalties. Penalties may include overtime compensation for a period of two years, associated income taxes once payments are correctly classified as income, both the employer's and employee's share of missing FICA contributions, missing benefits offered to all regular employees, expenses related to injuries eligible under workers compensation coverage, and other miscellaneous penalties.

There may be a written agreement between the worker and the hiring organization that describes the worker as a vendor, independent contractor, or contract employee and provides evidence of the described relationship. Regardless of the circumstances, a worker cannot independently elect to be treated as a vendor rather than as an employee. A contractual self-designation will not, in and of itself, provide sufficient evidence for determining worker status. The substance of the relationship, not the label, is determining.

A. Background

IRS believes that these questions of "employee" or "vendor" are compliance issues. Although workers who receive W-2s are 99 percent compliant, workers who receive 1099s are only 75 percent compliant. That means that significant amounts of federal taxes, Social Security taxes, and Medicare taxes are not being collected due to misclassifications. Ultimately, those of us who do pay our taxes have to pay more for the cost of government programs because others are not paying what they owe. If you, acting on behalf of the County, inappropriately hire a worker as a vendor, the County may be penalized. It will cost more over the long term to violate the law than to comply.

Both the US Department of Labor (US DOL) and the Internal Revenue Service (IRS) have similar methods for determining whether a worker should be classified as an employee. To enforce state laws regarding the provision of workers compensation coverage, the NC Department of Labor (NC DOL) has a slightly different method for determining whether a worker should be classified as an employee. If the worker does not qualify to be classified as an employee under any of the methods used by these federal or state agencies, the worker may qualify to be classified as a vendor. Where these methods differ, the classification may be best determined in consultation with staff of the Human Resources Department and Finance Department. This determination must be completed before any agreement for work is entered and before any work is performed.

Any compensation other than reimbursement of expenses under an IRS accountable plan should be reported as wages. An accountable plan is one that is designed to reimburse only

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actual, business expenses where the employee is required to produce receipts or mileage records and is reimbursed based on those receipts and mileage records. An accountable plan must (1) require workers to substantiate incurred business expenses, (2) provide advances or reimbursements only for reasonably expected business expenses, and (3) require that any amounts received that exceed substantiated expenses must be returned within a reasonable period. Expense reimbursements paid under an accountable plan are neither included in W-2 wages nor reported on a 1099-MISC.

B. Control Factors (Internal Revenue Service)

The Internal Revenue Code (Code) does not formally define the term employee. However, the Code in Section 3-12.1(d)(2) provides some guidance by describing an employee as “any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.” The determination of worker status is based on the facts and circumstances that exist in light of existing common law. The common law rule for determining worker status is whether the hiring organization has the right to direct and control the worker as to the manner and means of performing a job.

Control is the key issue. Look closely at the definition of control: *the right to control and direct the worker who performs the services not only as to the results to be accomplished but also as to the details and means by which the result is accomplished (not only what work but, also, where and how it is done)*. Where the hiring organization may change a given worker’s job duties or reassign duties among several workers, it has supervisory control over a worker. Given supervisory control, the worker should be classified as an employee.

The hiring organization must consider all the facts and circumstances in deciding whether a worker is a vendor or an employee. The facts will fall into three main categories: (1) whether the hiring organization has the right to control worker behavior (**behavioral control factors**); (2) whether the hiring organization has financial control over the worker (**financial control factors**); and (3) the relationship between the hiring organization and the worker (**relationship factors**).

The **behavioral control factors** refer to facts that indicate if the hiring organization has the right to direct and control how a worker performs the specific job. Does the hiring organization have the right to dictate the manner and means for completing a job? Facts that indicate the right to control are the hiring organization sets rules for employee conduct, sets the time to begin and end work, provides training or instructions on how to perform a job and monitors the progress towards the completion of the job.

If the hiring organization has the right to direct not just the results but the details and means by which the result is accomplished, then the worker is subject to the will and control of the hiring organization. That worker, in the eyes of the IRS, is an employee, not a vendor. It is not necessary that the hiring organization actually direct or control the manner in which the services are performed, just that it has the right to do so. A simple example would be that the hiring organization hires a laborer to clean up after a storm. The supervisor will tell the laborer

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where to clean up and, if needed, may direct how the laborer does the work. That laborer would be an employee. Remember that a worker who is required to comply with other peoples' instructions about when, where, and how to work is an employee.

The **financial control factors** refer to facts that indicate if the hiring organization controls the business and financial aspects of the workers' activities. Employees generally have no capital investment in providing the services, have no opportunity for profit or risk of loss in providing the services, do not advertise their services to the general public, do not provide the same services to other entities at the same time, and do not incur un-reimbursed expenses in providing the services. There is no opportunity for a worker to suffer a loss where the only possible loss is the failure of the hiring organization to pay the worker.

In contrast, a vendor who quits without completing the job for which hired might have to forfeit some of the contract price. Moreover, the hiring organization could sue the vendor either for specific performance (an order from the court to the worker to complete the work agreed upon) or for breach of contract, provided that the hiring organization can show damages resulting from the failure to complete the work as agreed.

The **relationship factors** refer to facts that evidence the relationship of the worker to the hiring organization. The relationship is generally evidenced by examining how the parties perceive their relationship and how that relationship is represented to others. Is there evidence of permanency in the relationship? Are the services provided by the worker integral to the hiring organization's operations or an independent trade or business of the individual? Can the worker quit or be terminated without warning and without liability except for unpaid wages?

### FACTORS

In a 1987 Revenue Ruling (87-41), the IRS compiled a list of 20 factors that the courts had considered in the right-to-control test. These factors were:

#### BEHAVIORAL CONTROL FACTORS

- 1) Whether the worker must comply with another person's instructions about the work (such control indicates employee);
- 2) Whether the worker requires training in order to do the work (the hiring organization makes clear that it wants services performed in a particular way when it provides training in the actual methods the worker is to use or, more generally, in the hiring organization's policies and procedures; such training indicates employee; and, the mere fact of having a special skill is not in and of itself indicative of vendor status);
- 3) Whether the work must be performed during set hours (such specifications indicates employee);
- 4) Whether the worker must perform services in an order or sequence set by the hiring organization (such specifications indicates employee);
- 5) Whether a worker must submit reports (a requirement that the worker submit reports indicates employee);

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**FINANCIAL CONTROL FACTORS**

- 6) Whether the worker is paid by the hour, week or month (paying the worker a regular wage based on the amount of time spent performing services indicates employee);
- 7) Whether the worker's business or traveling expenses are paid by the hiring organization (such payments indicates employee);
- 8) Whether the worker furnished the tools, material and equipment needed to perform the work (such furnishings indicate vendor);
- 9) Whether the worker has a significant investment in facilities needed to do the work (such investment indicate vendor);
- 10) Whether the worker can make a profit or suffer a loss as a result of performing the services for the hiring organization either at a faster or slower pace than anticipated or at lesser or greater costs than estimated (indicates vendor);
- 11) Whether the worker can work for more than one firm at a time (such flexibility indicates vendor);
- 12) Whether the worker makes his or her services available to the general public (such availability indicates vendor);

**RELATIONSHIP FACTORS**

- 13) Whether the work performed by the worker is integrated into the hiring organization's operations (whether the worker provides services that the employing organization exists to provide; whether the worker performs the same work as others who are classified as employees; such relationship indicates employee);
- 14) Whether the worker must perform the services personally (such requests indicate employee);
- 15) Who hires, supervises and pays the worker's assistants, if any (payment by worker indicates vendor);
- 16) Whether the worker and hiring organization have a continuing relationship (long-term working status indicates employee; a continuing relationship can exist where work is performed at frequently recurring, but nonetheless irregular intervals, such as when the person works on an on-call basis);
- 17) Whether the worker must devote most of his or her time to the work for the hiring organization (such devotion indicates employee);
- 18) Whether the work must be performed on the employer's premises or can be done elsewhere (employees usually perform work on the employer's premises, whereas vendors usually perform work elsewhere);
- 19) Whether the hiring organization can discharge the worker (the hiring organization's threat of dismissal indicates employee since such action causes the worker to obey the hiring organization's instructions);
- 20) Whether the worker has the right to terminate the relationship without incurring any liability with the hiring organization (such right indicates employee).

As both the IRS and the courts emphasize, no single factor is controlling, and the importance of a factor will vary depending on both the occupation at issue and the circumstances under which the services are rendered.

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C. Economic Reality Factors (US Department of Labor)

According to the Fair Labor Standards Act (FLSA), an “employee” is broadly defined as “any individual employed by an employer.” The U.S. Department of Labor and the courts nevertheless recognize that there are people who perform work who cannot simply be called employees of the hiring organization. To determine whether or not a worker is an employee for FLSA purposes, courts have developed what is called an “economic reality” test.

FACTORS

The courts ask whether a worker depends upon the hiring organization for the opportunity to render service or whether the worker is in business for himself or herself. To make this determination, the courts use a six-factor test that asks:

- 1) What is the nature and degree of control that the hiring organization has over the way in which the worker is to perform the work? The more control that the hiring organization has over the worker, then, the more likely it is that the worker is an employee.
- 2) Does the worker have an opportunity to make a profit or a loss? The ability to make a profit or sustain a loss on a job is the hallmark of an independent contractor or other vendor.
- 3) Does the worker have an investment in the materials, equipment or other personnel required to perform the work? When a worker supplies the materials or equipment needed for the job or directly hires others to assist him or her in performing the work, this factor will weigh heavily in favor of vendor status.
- 4) Does the work require skill and independent initiative? Vendors usually have a special skill and exercise initiative in seeking out assignments or clients.
- 5) What is the expected duration of the working relationship? The vendor relationship is usually for a limited duration. Where a hiring organization engages a worker indefinitely, or where the worker has performed services for the hiring organization for a long period of time, the courts are more likely to find that the worker is an employee.
- 6) To what extent is the work an integral part of the hiring organization’s operations? Vendors usually perform work that is peripheral to the hiring organization’s operations. Where a worker is doing a job that is essential to the hiring organization’s operations, this factor will weigh in favor of employee status.

Each situation is evaluated in light of all of the circumstances of the hiring organization-worker relationship.

D. Injured Workers (NC Industrial Commission)

The NC Industrial Commission may have a different opinion in determining the worker status (employee versus vendor) of the individual. If the vendor does not have a workers' compensation policy, the NC Industrial Commission may consider the vendor as an employee for workers' compensation insurance purposes.

Under the North Carolina Workers' Compensation Act, “employees” are entitled to medical benefits and compensation for lost wages if they suffer an injury by accident while on the job

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or develop an occupational disease. Whenever a hiring organization retains a vendor who does not carry workers' compensation insurance and the owner or an employee of that business is injured, a determination must be made as to whether the injured worker is truly a vendor or, in fact, is an employee of the public entity and, thereby, eligible for worker's compensation benefits through the entity. The NC Industrial Commission and NC Courts have used the following tests to make this determination.

TYPE OF WORK PERFORMED

- (a) How many total employees does the contractor employ (excluding owner)?
- (b) What type of work is performed by the vendor and how does this work differ from work performed by employees of the hiring organization?

YES/NO RESPONSES

- (a) Is the person employed engaged in an independent business or occupation?
- (b) Does the person employed have a federal tax ID number?
- (c) Does the person employed perform similar work for any other business?
- (d) Does the person employed have the freedom to use assistants/helpers as he/she may think proper?
- (e) Does the person employed have full control over such assistants/helpers?
- (f) Does the person employed select his own time to perform work? (for example, your entity does not tell the person to work specific hours during the day)
- (g) Does the person employed have the independent use of his special skill, knowledge, or training in the execution of the work?
- (h) Is the person employed paid for the job in a lump sum amount (not paid by the hour)?
- (i) Does the person employed have the freedom to use their method of doing the work rather than another and not be subjected to discharge because they adopt one method over another method?
- (j) Is the person employed furnished tools or equipment owned by you?

None of these factors is controlling, but each is to be considered in determining the relationship between the parties. The essential issue is whether the alleged "employer" has the right to control the method and means by which the "employee" performs their work.

E. Other Matters

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA) and the Age Discrimination in Employment Act (ADEA) prohibit employers from discriminating against employees on the basis of race, color, gender, religion, and national origin, disability, and age. Under the North Carolina Employment Security Act (NC ESA), unemployment insurance benefits may be paid to workers who have been separated from employment. Many employees also receive the promise of future benefits under employer retirement systems, such as North Carolina's Local Government Employee Retirement System. A worker who qualifies as an employee under the IRS and US DOL tests will almost certainly be an employee for Title VII, ADA, ADEA, NC ESA, and retirement system purposes.

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In designing benefits packages, employers are generally free to create separate classes of employees, some of whom are eligible to participate in benefits plans, some of whom are not, some of whom receive more generous benefits, other less generous ones. The only limitation on an employer's ability to fashion benefits offerings as it sees fit is that any exclusion of an employee or group of employees from participation in a benefit plan may not be based on race, color, gender, religion, national origin, age, disability or any other category prohibited by law.

Public employer retirement and welfare-benefit plans such as health insurance are governed by state contract law. This is in contrast to private-sector pension and welfare-benefit plans which are governed by the federal Employee Retirement Income Security Act (ERISA).

Under North Carolina contract law, when an employer's personnel policy has promised employees certain benefits, the promise is enforceable and the employer must provide the benefits promised. This is an exception to the general rule adopted by the North Carolina courts that says that an employer's issuance of a personnel policy manual or handbook for employees does not create an implied contract of employment incorporating the document's terms. The rule that makes a promise of benefits enforceable would likely be the linchpin of worker arguments that once classified as employees, they are entitled to employee benefits. This means that employers must provide the benefits set forth in the personnel policy as long as the provision and the policy that contains it remain in effect.

The personnel policy of many employers offers participation in its benefit plans to all full-time "employees," without defining the term "employee" any further. Therefore, without establishing different groups of employees or defining the term "employee" within its personnel policy, an employer may be required to treat workers as employees within the meaning of the personnel policy and offer participation in its benefit plans retroactively.

Under the County's personnel policy, temporary part-time employees are not eligible for participation in the County's benefit plan.

F. Specific Scenarios

Any worker that performs work similar in nature and scope to another worker that is classified as an employee should also be classified as an employee. Any former employee that wishes to provide the same essential work as that provided during employment will be treated as an employee again.

ELECTED AND APPOINTED OFFICIALS

All public officials, both elected and appointed, are employees, regardless of whether the officials are part-time, full-time, or interim. For example: 1) the members of the governing board are considered public officials; 2) all other elected officials are employees; 3) the clerk to the board is considered a public official and should be treated the same; and 4) the County Manager and all other Department Managers are public officials. Appointed officials serve at

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the pleasure of the governing board and follow state laws and County ordinances (G.S. 160A - 147-150).

BOARD ATTORNEY

By appointing the city/county attorney, the governing board will have some control over when that attorney provides services. Usually, the attorney is required to attend all board meetings and provide set services to the board. There has been a case in North Carolina where the IRS said an attorney on retainer to a unit was an employee although the person worked for a private law firm. The issue here also is related to the right of control. Due to this level of control, the IRS argues that this is an employer-employee relationship. By contracting with the law firm instead of an individual member of that law firm whereby the law firm determines which attorneys in the law firm may then provide services to the unit, the County's arrangement for a board attorney is more indicative of a vendor relationship rather than an employer-employee relationship.

INSTRUCTORS

When the County offers classes to citizens in various subjects, the County may hire part-time instructors from the community with expertise in the subject matter. Typically, instructors should be employees due to the right of control over the instructors and the class. If the County is providing the space, handling the registration fees, providing materials and audio-visual equipment, and setting the minimum participation required for the class, then the instructor should be considered an employee of the County. If the County is simply renting space to an instructor and that instructor is directly handling all the other aspects of administering the class, then the instructor could possibly be properly classified as a vendor.

VOLUNTEERS

Regular volunteers are considered to be in an employer-employee relationship even when that volunteer performs and receives compensation on an on-call contract basis or receives no compensation at all. Volunteer firefighters and rescue squad workers may mistakenly believe that their services are excluded from employment under the emergency worker exclusion. The Emergency Worker exclusion (see Internal Revenue Code Chapter 3-12.1(b)(7)(f)) provides that services performed by employees on a temporary basis in the case of fires, storm, snow, earthquake, flood or other emergencies are exempt from being treated as employees. In other words, this exception applies only to temporary volunteers/workers who respond to irregular emergencies such as hurricanes or floods. Volunteers who are on-call and work regularly but intermittently do not qualify for the emergency worker exclusion. When a worker who is termed a volunteer receives compensation, and there is an employer-employee relationship, that compensation is wages subject to Federal withholding, State withholding, and social security and Medicare taxes. Those wages must be reported on an annual W-2.

On the other hand, volunteers may receive amounts other than salaries that are intended to reimburse them for expenses. To avoid being taxed as wages, these reimbursements must be paid under an accountable plan. Amounts that are termed reimbursements but that are not paid under an accountable plan are subject to Federal and State withholding, and social

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security and Medicare taxes. Therefore, a per day or fixed amount paid to a volunteer (that does not reimburse actual, documented expenses) is includible in federal withholding and state withholding, is subject to social security and Medicare taxes, and must be reported at year-end on a W-2.

Volunteers may be classified as vendors in performing odd jobs, selling supplies, or performing other work outside of their normal scope of work while volunteering. Likewise, part-time employees may be treated separately as vendors for separate work. Use “Worker Status Determination Report” to decide which treatment is correct.

CONSTRUCTION CONTRACTOR

Imagine that a city wants to build a swimming pool. Officials of the city have opinions about what features they want in a swimming pool, but they do not know how to construct a swimming pool, and no one in the city’s regular employ has experience in swimming pool construction. Therefore, the city engages a swimming pool contractor to construct the pool. This is a classic example of the vendor relationship.

The city will tell the swimming pool contractor what result it wants: a swimming pool of a particular size, in a particular layout, with specified depths, complete with certain accessories like diving boards, stairs and ladders. The city and contractor will agree upon a price for the final product. While the city may negotiate with the contractor – and even have a price above which it will not go – the city will not be able to set the price unilaterally. The contractor, who will supply all of the materials, equipment and workers needed to construct the swimming pool, will estimate how much time it will take to construct the pool and how much it will cost. It will then determine how much or how little profit it is willing to make to take this job.

DAY LABORERS

The IRS does not recognize casual labor as these workers are still considered employees. Even if a worker only works one day, he or she is still an employee as the entity has control over when and where the person reports to work and control over how the person does the job as well as what type of job the person does.

PROFESSIONAL WORKERS

The degree of control necessary to find employee status varies in accordance with the nature of the services the worker provides. Professionals such as physicians, certified public accountants, lawyers, dentists, registered nurses, architects, engineers, professors, and building and electrical contractors (to name just a few examples) require specialized skills to do their work. The methods that these skilled professionals use are frequently dictated by the standards of their individual professions, rather than by the hiring organization. The high level of knowledge and skill needed to perform their respective services often precludes direct supervision of their work. Nevertheless, when skilled workers such as these are hired under conditions in which they are paid a set salary and follow prescribed routines during set hours, they lose some of the independence that characterizes the practice of their profession and their usual status as vendors and they become employees.

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Significant factors for professional workers are (1) the manner in which the professional is paid for his services -- that is, whether the professional is paid on a percentage basis, salary basis, or a percentage basis with a guaranteed minimum; (2) whether the professional is permitted to employ associates or to engage substitutes when he or she is absent from work; (3) if the professional is permitted to engage substitutes, whether the professional or the hiring organization is responsible for compensating them; and (4) whether the professional is permitted to perform professional services for others and/or to engage in their own private practice.

For example, registered nurses are considered skilled professionals and the IRS generally recognizes them as vendors when they perform private-duty nursing services for individual patients. In a private-duty nursing setting, nurses typically have full discretion in administering their professional services and are not subject to enough direction and control by the hiring party (usually the patient or the patient's family member) to establish an employment relationship. Yet, when registered nurses are part of a medical staff of a hiring organization, they are usually subject to the control of a physician or another nurse. Under these conditions, the registered nurse is an employee. The IRS makes a distinction between registered nurses, on one hand, and licensed practical nurses (LPNs), nurse's aides, and home health aides, on the other: LPNs and aides who assist patients with personal and domestic care do not generally render professional care and are usually subject to almost complete direction and control regardless of the setting in which they perform their services; they are almost always employees.

G. Summary of Important Factors

EMPLOYEE

1. Training is an indication of an employee because it tells the worker how the hiring organization wants the job done.
2. If the worker is integrated into the existing workforce, this indicates the worker is under the direction and control of a manager of the hiring organization.
3. A continuing relationship indicates employee.
4. Establishing set hours indicates control.
5. Prohibition of doing work for others indicates employee.
6. If the person can only work on the hiring organization's premises, this indicates control.
7. If the hiring organization can require the work to be done in a specific sequence, this shows control.
8. If a regular report - either written or oral - is required, this indicates control.
9. The furnishing of tools or material indicates control.
10. Payment by the hour or week indicates employee.
11. If a worker can quit without incurring a liability, this indicates that the worker is an employee.

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VENDOR

1. If the worker is required to do the work by himself, this indicates that the hiring organization is not interested in methods but results.
2. Payment by commission or by the job indicates vendor.
3. A vendor is usually required to complete a specific job and is responsible for satisfactory completion of the job. If a person is legally obligated to make good for the failure to complete a job satisfactorily, this is an indication of a vendor.

H. Making the Determination

To help avoid penalties from misclassification, each hiring organization should establish a procedure whereby it does an individualized analysis of any proposed relationship with a worker it plans to engage on a vendor basis. As described earlier in this manual, the IRS uses a three-part test to determine if a worker is an employee or vendor: behavioral control, financial control and relationship of the parties.

Determining whether someone is an employee or a vendor is a test of facts and circumstances. The final decision maker - the courts - plays a major role in what facts will control the decision. In each case, the courts will weigh certain factors more important and will ask whether there are more factors pointing toward employee or toward vendor.

On a separate form entitled "Worker Status Determination Report," several questions are listed to help County staff and potential workers to assess whether the potential worker should be paid as an employee or as a vendor. Where questions arise in completing the form, the classification may be best determined in consultation with staff of the Human Resources Department and Finance Department.

I. Section 530 "Safe Harbor"

Under section 530, an employer meeting the following conditions will not be held liable for failure to withhold employee federal income taxes or for past-due FICA taxes: (1) the employer has treated a worker as a vendor, (2) it has filed all required federal employment tax returns on a basis consistent with the classification as a vendor (that is, the employer has filed IRS Form 1099-MISC), and (3) it had a reasonable basis for not treating the worker as an employee. Section 530 relief is not available, however, where the employer has treated another worker holding a substantially similar position as an employee.

The extent to which government employers may invoke section 530 as a defense against past improper classification of workers as vendors is unclear. Based on past written materials and no contrary evidence, the most likely current position of the IRS is that section 530 is available to government employers only as a defense against federal income tax liability, not for FICA obligations. Therefore, since the IRS expects the County to set the example as a hiring organization, the County is held to a higher standard than private businesses.