

Guidelines for Employment Status

UTAH EMPLOYMENT SECURITY ACT SECTION 35A-4-204(3)

Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that: (a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and (b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.

The following factors, if applicable, are used to determine if an individual is customarily engaged in an independently established trade, occupation, profession or business:

- **Separate Place of Business** — The worker has a place of business separate from that of the employer.
- **Tools and Equipment** — The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. "Tools of the trade," such as those used by carpenters and mechanics, do not necessarily demonstrate independence.
- **Other Clients** — The worker performs services of the same nature for other customers or clients and is not required to work exclusively for the employer.
- **Profit or Loss** — The worker is in a position to realize a profit or risk a loss from expenses incurred through an independently established business activity.
- **Advertising** — The worker advertises services in telephone directories, newspapers, magazines, online, or by other methods clearly demonstrating an effort to generate business.
- **License** — The worker has obtained any required and customary business, trade, or professional licenses.
- **Business Tax Forms** — The worker maintains records to file self-employment and other required business forms.

The following factors, if applicable, will be considered to determine if an individual's services are subject to the employer's right of control and direction:

- **Instruction** — A worker who is required to comply with another person's instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with instructions.
- **Training** — Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the services are performed expects the services to be performed in a particular method or manner.
- **Pace or Sequence** — A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control and direction.

continued

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- **Personal Service** — A requirement that the service must be performed personally and may not be assigned to others indicates the right to control or direct the manner in which the work is performed.
- **Work on Employer's Premises** — A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.
- **Continuing Relationship** — A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed regularly or at frequently recurring although irregular intervals.
- **Set Hours of Work** — The establishment of set hours or a specific number of hours of work by the employer indicates control.
- **Method of Payment** — Payment by the hour, week or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job.

The factors listed in Subsections R994-204-303(1)(b) and (2)(b) are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed.

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