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Working Retirees – Independent Contractors
MPERA Quick Reference Guide

A retiree working for a company that has contracted to provide work is not an independent contractor, even if they are a PERS retiree receiving a benefit. The employer will need to determine if the worker fits into the Independent Contractor category based on their working relationship or contract with that person.

How do I know if I need to report and pay contributions for an independent contractor?

Reporting an Independent Contractor Checklist:

- Person is doing work for an employer that would normally be done by an employee in a PERS-covered position.
- Person is a retired member of PERS.
- Person is under age 70 ½. (if over age 70 ½, report as a Non-Contributing Employee (NCE) only).
- Person is performing work that is within the scope of the duties of the public employer.
- Person is not working as an employee of a company that has contracted with the employer.

If the employee meets all of the above requirements, contributions and reporting requirements apply.

Examples:

- A PERS retiree is contracted to answer phones for an agency to fill a position that would normally be filled by an employee covered under PERS. Employer contributions are required.
- A law firm is contracted to provide legal services for an agency. A PERS retiree works for the law firm. Employer contributions are not required.
- An attorney who is a PERS retiree is contracted to provide legal services that an employee of the agency would normally provide. Employer contributions are required.

Each employer will need to determine if the retiree is an independent contractor based on their working relationship or contract with that retiree.

- Criteria for independent contractors.
 - 2.43.1302(16) – renders service in the course of an occupation and:
 - (a) Engaged in an independent trade, occupation, profession or business
 - (b) Free from control or direction over performance of services both in fact and under contract

Free from control or direction over performance if a convincing accumulation of factors indicate:

- (a) Person has the right to exercise control over how they work
- (b) Paid on other than time basis (piece/project)
- (c) Furnishes own equipment and supplies
- (d) Employer can't fire (but can terminate contract)

2.43.1302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

* * *

(16) "Independent contractor" means an individual who renders service in the course of an occupation and is both:

(a) engaged in an independent trade, occupation, profession, or business; and
(b) under contract and in fact, at all times free from control or direction over the performance of the services.

(i) MPERA may consider but is not limited to the following factors when determining freedom from control and direction:

(A) right or exercise of control of the means by which the work is accomplished;

(B) method of payment (time basis indicates employment);

(C) furnishing of equipment; and

(D) employer's right to fire.

(ii) Independent contractor status may only be established by a convincing accumulation of these factors indicating freedom from control or direction over performance of the services.

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