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**Good Government
Starts Here!**



D I V I S I O N O F H U M A N R E S O U R C E S



Department of Personnel & Administration

Independent Contractor Training 2008

Developed by the Division of Human Resources, Dept. of Personnel and Administration

Division of Human Resources



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Training Objectives

- Provide guidance when considering whether or not it is legal to use independent contractors instead of state personnel system employees to perform personal services
- To ensure compliance with Part 5 Title 24, Article 50 C.R.S., and Chapter 10 of the State Personnel Rules.



Independent Contractor

Two Major Considerations

1. What is the relationship?
2. Does state law permit the contract?

Two Major Categories

1. Multi-employee contractor
2. Sole proprietor

Differences are in the degree of control!



Independent Contractor Considerations

- All relationships are presumed to be employment relationships. The agency has to prove and defend the type of relationship, if challenged by DHR/ IRS/ DOLE/State Auditor/State Purchasing or in court!
- Is the contract legal under State law?
 - Personal services contracts are not to undermine the state personnel system – if contracting with an independent contractor - the conditions in State law must be met!
(CRS 24-50-504)



Multi-Employee Contractor

- Assigns leased workers to carry out specific assignments
- Relationship with company
- Contractor responsible for all employment related functions



Multi-Employee Contractor Continued

- Departments may exercise certain amount of control
- Clearly distinguish leased workers from employees
- Accurately report overtime to the contractor
- Provision addressing company assuming overtime liability



Multi-employee Contractor Continued

Leased workers should not:

- Repeat contracts or assignments without six-month break
- Participate in employee functions
- Have names posted on offices or cubicles
- Have phone numbers listed in directory
- Receive performance recognition



Independent Contractor Sole Proprietor

- Self-employed
- Recognized as independent contractor by IRS



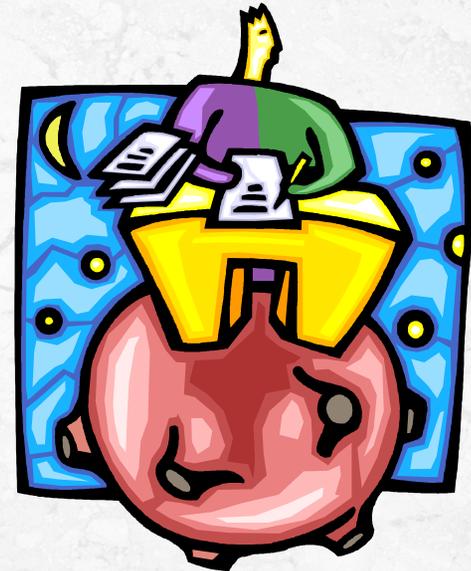
Sole Proprietor Continued

- Responsible for paying own taxes under federal and state law
- Criteria established by state and federal law



Sole Proprietor Continued

- Determine their own work schedule
- Freely work for other clients
- Have own place of business
- Use own equipment
- Bill by lump sum



Independent Contractor Federal Law

What the Feds look for in determining worker status:

- Amount of investment in facilities and equipment
- Amount of skill, initiative, judgment, or foresight
- Workers independence within the business structure
- Permanency of the relationship



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(optional) Activity #1

- Review the personal services scenarios at your tables.
 - Decide what is wrong or right with the scenarios?
 - What is missing?
- ◆ **What is the relationship?**
 - ◆ **What information**
 - ◆ **Come to consensus**



(optional) Activity #2

Official Colorado Certification for Personal Services Agreements Form (PSA)

- Must attach supporting documentation, such as copy of contract or purchase order, that includes the scope of work and budget.
- Review Approval Criteria and provide examples of when the specific criteria would be used and not used.
- Must be entirely completed!



The “Can Do” to Independent Contracting

#1 - First thing to “do”.....

Need to determine the **relationship** as an independent contractor **sole proprietor or leased worker?**



Sole Proprietor Determination

- **Does the Independent Contractor...?**

determine his or her own work schedule;

freely work for other clients;

have his or her own place of business;

use their own equipment;

bill for specific deliverables;

need to conduct work on a regular or ongoing basis for the agency?



Leased Worker Determination

- **Is the leased worker.....?**

selected by the employment agency or does the department tell them who to send;

treated like regular state employees or are they distinguished and treated differently than state employees;

coming back as a State temporary employee;

coming back year after year?



The “Can Do” to Independent Contracting

#2 – Second thing to “do”....

- Need to determine what the **impact** on the state personnel system is, by assessing the labor need of the department’s function, and if state employees can do the work, with the resources they are provided.
- Need to develop a business case for contracting out any state labor need or personal services performed by state employees. **Plan ahead!**



Business Case for Independent Contractors

- Need to analyze the overall labor need and business needs of the work that needs to be conducted.
- Need to assess the historical and future labor needs as well.



Handouts - Review

- Temp State Employee vs. Short-term Personal Services Contract chart
- Independent Contractor articles
- Advisor articles
- Technical Assistance – Independent Contractors
- Cost Comparison Instruction Sheet
- PSA Form



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