

The FISCAL REPORT 32 informational update

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Ask SSC . . . Are There New Rules for Independent Contractors?

Q. I heard that there are new rules regarding the classification of Independent Contractors. What does that mean for school districts?

A. The Fair Labor Standards Act uses an “economic realities” test, which focuses on whether the worker is economically dependent upon the employer or is truly an independent contractor. According to a decision in *Scantland v. Jeffrey Knight, Inc.*, 721 F.3d 1308, 1312 (11th Cir. 2013), “Ultimately, in considering economic dependence, the court focuses on whether an individual is in business for himself or is dependent upon finding employment in the business of others.”

There is an increased oversight by the Internal Revenue Service as well as further clarification through the courts on the “suffer or permit” standard. “An ‘entity suffers or permits’ an individual to work if, as a matter or economic reality, the individual is dependent on the entity.” According to the July 15, 2015, Administrator’s Interpretation No. 2015-1 issued by the U.S. Department of Labor, “misclassification of employees as independent contractors is found in an increasing number of workplaces in the United States.” The letter can be found [here](#).

To protect your district, consider the following essential questions if you are considering an independent contractor relationship:

1. Is the work an integral part of the district?
2. Does the worker’s managerial skill affect the profit or loss opportunity for the contractor?
3. How does the worker’s investment compare to the district investment?
4. Does the work require special skill and initiative?
5. Is the relationship between the contractor and the district permanent or indefinite?
6. What is the nature and degree of the district’s control?

Misclassifications are expensive and would require a significant amount of time to audit and correct. Before classifying an individual as a contractor, consider the essential questions above, consult with your county office, and consult with your legal counsel.

—Debbie Fry, Charlene Quilao, and Suzanne Speck

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