

**Duplin County Worker Status Policy**  
**Employee or Independent Contractor**

The IRS Code does not formally define employee, but does provide guidance in Code Section 3121(d) (2) 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.” Worker status, by the common law rule, is determined by “whether the local government has the right to direct and control the worker as to the manner and means of performing a job.” In an effort to comply with IRS regulations the facts and circumstances of each service contract will be reviewed by use of the three main categories that courts use to determine employee or independent contractor. The three categories are: (1) behavioral control; (2) financial control; and (3) the type of relationship.

Behavioral Control – Facts that show whether the county has a right to direct and control how the employee performs the job, to include instructions on:

- a. When, where, and how to work;
- b. What tools or equipment to use;
- c. What workers to hire or what workers to assist with the work;
- d. Where to purchase supplies and services;
- e. What work must be performed by a specified individual;
- f. What order or sequence to follow; and
- g. Training – an employee may be trained to perform services in a particular manner.

Financial Control – Facts that show whether the county has a right to control the business aspects of the worker’s job. These include:

- a. The extent to which the worker has un-reimbursed expenses;
- b. The extent of the worker’s investment;
- c. The extent to which the worker makes services available to the relevant market;
- d. How the business pays the worker; and
- e. The extent to which the worker can realize a profit or loss.

Type of Relationship – Facts that show the type of relationship between the county and the worker include:

- a. Written contracts describing the relationship the parties intended to create;
- b. Whether the worker is provided with employee-type benefits;
- c. The permanency of the relationship; and
- d. How integral the services are to the counties activity.

For a contract involving an individual’s personal service, before requesting Commissioner approval/signature or before signature by a departmental employee, the department head must complete the attached questionnaire, attach it to the contract, and send both to the attorney for review. The results of this questionnaire will be used to determine the working status of the individual as an employee or as an independent contractor. If independent contractor status is determined, the form of the contract must

then be acceptable to the county attorney, and funds must be available in the budget, before Commissioner approval/signature or department head signature. If employee status is determined, no contract is needed. The department head must have a vacant position available or the department head must ask the Commissioners to establish a new position.

**Employee or Independent Contractor - Questionnaire**

**Behavioral Control** – Facts that show whether the county has a right to direct and control how the employee performs the job.

Is the worker generally told:

- a. When, where, and how to work? \_\_\_\_\_
- b. What tools or equipment to use? \_\_\_\_\_
- c. What workers to hire? \_\_\_\_\_
- d. What workers to assist with the work? \_\_\_\_\_
- e. Where to purchase supplies and services? \_\_\_\_\_
- f. What work must be performed by a specified individual? \_\_\_\_\_
- g. What order or sequence to follow? \_\_\_\_\_
  
- h. Will the employee be trained by the County to perform services in a particular manner. \_\_\_\_\_

**Financial Control** – Facts that show whether the county has a right to control the business aspects of the worker’s job.

- a. Will the worker have un-reimbursed business expenses? \_\_\_\_\_
- b. Will the worker investment anything, other than time, in this relationship?
  - Supplies? \_\_\_\_\_
  - Equipment? \_\_\_\_\_
  - Materials? \_\_\_\_\_
  - Office? \_\_\_\_\_
- c. Does the worker make these services available to others? \_\_\_\_\_
- d. How does the county pay the worker? \_\_\_\_\_
- e. Does this relationship affect the worker’s ability to realize a profit or loss? \_\_\_\_\_

**Type of Relationship** – Facts that show the type of relationship between the county and the worker.

- a. Is there a written contract describing the relationship the parties intended to create? \_\_\_\_\_
- b. Is the worker provided employee-type benefits? \_\_\_\_\_
- c. What is the permanency of the relationship? \_\_\_\_\_
  - Long term – probably employee
- d. Are the services provided integral to the principal activity of the department? \_\_\_\_\_

The information supplied is true and correct to the best of my knowledge.

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
Date