

ADMINISTRATIVE PROCEDURES



Procedure Number: 22-73

Effective Date: 09/04/2009

Revision Date: 10/11/2011

C. Dulubau
County Administrator

SUBJECT: **EMPLOYEE VERSUS INDEPENDENT CONTRACTOR**

DEPARTMENT RESPONSIBLE: **All County Departments**

1. **PURPOSE**

This procedure addresses the manner by which Pima County will determine whether an individual hired by Pima County to perform services shall be treated as an employee of Pima County or as an independent contractor

2. **BACKGROUND**

Pima County is liable for the payment of payroll-related taxes and insurance premiums for workers' compensation insurance for its employees. The determination of whether a worker is an employee or an independent contractor for payroll tax purposes depends on the specific facts of the working arrangement with the individual and is primarily impacted by the extent to which the County has the right to direct and control the service provider with regard to what is to be done and how it is to be done. An employer generally has the right to control how and when an employee performs the service and provides an employee with the necessary equipment and or space. Independent contractors determine for themselves how and when the work is to be performed and provides their own resources.

The County must withhold and or pay federal income taxes, social security and Medicare taxes, and unemployment tax on wages paid to an individual who is considered to be an employee by the IRS even if the individual is labeled as an independent contractor in the contract for services. Failure to withhold taxes and failure to pay payroll-related taxes subjects Pima County to the payment of taxes, penalties, and interest to the Internal Revenue Service.

3. PROCEDURE

- 3.1. At the time a department requests a contract for services with an individual, and prior to that contract being processed by Procurement or the department, the department shall complete the Pima County Independent Contractor Versus Employee Determination Questionnaire (Attachment 1).
- 3.2. The completed form, together with a copy of the proposed contract for services, shall be submitted to the Division Manager, Financial Operations, for evaluation.
- 3.3. If Finance determines that the proposed contract appears to meet the IRS designation of an employee rather than an independent contractor, Finance will complete and submit IRS Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, (Attachment 2) for final determination. The department may not enter into this contract until final determination from the IRS has been received.

4. RESPONSIBLE DEPARTMENTS

The department requesting a contract for services of an individual shall complete the appropriate forms.

The Department of Finance and Risk Management shall review the forms and make a determination of the status of the individual as an employee or independent contractor.

The Procurement Department shall refer departments requesting a contract for services of an individual to this Administrative Procedure.



Pima County INDEPENDENT CONTRACTOR vs EMPLOYEE DETERMINATION QUESTIONNAIRE

		Yes	No
1	Does Pima County provide instructions to the worker about when, where, and how he or she is to perform the work?		
2	Does Pima County provide training to the worker?		
3	Are the services provided by the worker integrated into Pima County's business operations?		
4	Must the services be rendered personally by the worker?		
5	Does Pima County hire, supervise, and pay assistants to the worker?		
6	Is there a continuing relationship between Pima County and the worker?		
7	Does Pima County set the work hours and schedule?		
8	Does the worker devote substantially full time to the business of Pima County?		
9	Is the work performed on Pima County premises?		
10	Is the worker required to perform the services in an order or sequence set by Pima County?		
11	Is the worker required to submit oral or written reports to Pima County?		
12	Is the worker paid by the hour, week, or month?		
13	Does Pima County have the right to discharge the worker at will?		
14	Can the worker terminate his or her relationship with Pima County any time he or she wishes without incurring liability to Pima County?		
15	Does Pima County pay the business or traveling expenses of the worker?		
16	Does the worker furnish significant tools, material, or equipment?		
17	Does the worker have a significant investment in facilities?		
18	Can the worker realize a profit or loss as a result of his or her services?		
19	Does the worker provide services for more than one firm at a time?		
20	Does the worker make his or her services available to the general public?		
21	Does the contract require the standard insurance language?		
22	Is the contractor a former employee of Pima County? If yes, indicate the job title, department, and date of termination.		

 Job Title Department Date of Termination

The undersigned by signing below certifies that all responses herein are true and accurate.

 Date Appointing Authority Signature Printed Name Department

The undersigned has determined that the individual's status is Independent Contractor.

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

 Date Finance and Risk Management

Form **SS-8**
(Rev. August 2011)

**Determination of Worker Status for Purposes
of Federal Employment Taxes and
Income Tax Withholding**

Department of the Treasury
Internal Revenue Service

OMB. No. 1545-0004

For IRS Use Only:
Case Number:

Earliest Receipt Date:

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ▶ _____

Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* on page 6 for more information. If you do not want this information disclosed to other parties, do not file Form SS-8.

Parts I-V. All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or workers' name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

Part I General Information

- This form is being completed by: Firm Worker; for services performed _____ to _____
(beginning date) (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get worker's compensation benefits, or you were audited or are being audited by the IRS). _____

- Total number of workers who performed or are performing the same or similar services: _____
- How did the worker obtain the job? Application Bid Employment Agency Other (specify) _____
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ _____
If both Form W-2 and Form 1099-MISC were issued or received, explain why. _____
- Describe the firm's business. _____

Part I General Information (continued)

- 7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner:
 Previous owner's taxpayer identification number: _____ Change was a: Sale Merger Acquisition Reorganization
 Other (specify) _____
 Description of above change: _____
 Date of change (MM/DD/YY): _____
- 8 Describe the work done by the worker and provide the worker's job title. _____
- 9 Explain why you believe the worker is an employee or an independent contractor. _____
- 10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?
 Yes No N/A
 If "Yes," what were the dates of the prior service? _____
 If "Yes," explain the differences, if any, between the current and prior service. _____
- 11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. _____

Part II Behavioral Control (Provide names and titles of specific individuals, if applicable.)

- 1 What specific training and/or instruction is the worker given by the firm? _____
- 2 How does the worker receive work assignments? _____
- 3 Who determines the methods by which the assignments are performed? _____
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? _____
- 5 What types of reports are required from the worker? Attach examples. _____
- 6 Describe the worker's daily routine such as his or her schedule or hours. _____
- 7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. _____
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). _____
- 9 Is the worker required to provide the services personally? Yes No
- 10 If substitutes or helpers are needed, who hires them? _____
- 11 If the worker hires the substitutes or helpers, is approval required? Yes No
 If "Yes," by whom? _____
- 12 Who pays the substitutes or helpers? _____
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? Yes No
 If "Yes," by whom? _____

Part III Financial Control (Provide names and titles of specific individuals, if applicable.)

- 1 List the supplies, equipment, materials, and property provided by each party:
 The firm: _____
 The worker: _____
 Other party: _____
- 2 Does the worker lease equipment, space, or a facility? Yes No
 If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement) _____
- 3 What expenses are incurred by the worker in the performance of services for the firm? _____
- 4 Specify which, if any, expenses are reimbursed by:
 The firm: _____
 Other party: _____
- 5 Type of pay the worker receives: Salary Commission Hourly Wage Piece Work
 Lump Sum Other (specify) _____
 If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. \$ _____
- 6 Is the worker allowed a drawing account for advances? Yes No
 If "Yes," how often? _____
 Specify any restrictions. _____
- 7 Whom does the customer pay? Firm Worker
 If worker, does the worker pay the total amount to the firm? Yes No If "No," explain. _____
- 8 Does the firm carry workers' compensation insurance on the worker? Yes No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? _____
- 10 Does the worker establish the level of payment for the services provided or the products sold? Yes No
 If "No," who does? _____

Part IV Relationship of the Worker and Firm

- 1 Please check the benefits available to the worker: Paid vacations Sick pay Paid holidays
 Personal days Pensions Insurance benefits Bonuses
 Other (specify) _____
- 2 Can the relationship be terminated by either party without incurring liability or penalty? Yes No
 If "No," explain your answer. _____
- 3 Did the worker perform similar services for others during the time period entered in Part I, line 1? Yes No
 If "Yes," is the worker required to get approval from the firm? Yes No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. _____
- 5 Is the worker a member of a union? Yes No
- 6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. _____
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? _____
- 8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? _____
- 9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? _____
- 10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? _____

Part V For Service Providers or Salespersons. Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? _____
- 2 Who provides the worker with leads to prospective customers? _____
- 3 Describe any reporting requirements pertaining to the leads. _____
- 4 What terms and conditions of sale, if any, are required by the firm? _____
- 5 Are orders submitted to and subject to approval by the firm? Yes No
- 6 Who determines the worker's territory? _____
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? Yes No
If "Yes," whom did the worker pay? _____
If "Yes," how much did the worker pay? \$ _____
- 8 Where does the worker sell the product (for example, in a home, retail establishment)? _____
- 9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. _____
- 10 Does the worker sell life insurance full time? Yes No
- 11 Does the worker sell other types of insurance for the firm? Yes No
If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance %
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation %
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? Yes No
Describe the merchandise and state whether it is equipment installed on the customers' premises. _____

Sign Here Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.

Title ▶ _____
Date ▶ _____

Type or print name below signature.