

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 010: MEMBERSHIP**

[459-010-0030]

[Determination of Employee Status]

[(1) The term "employee" shall have the same meaning as provided in ORS 238.005 and OAR 459-005-0001(14).]

[(2) Determination of whether an individual is an employee is made under common-law rules. Under common-law rules, every individual who performs labor or services subject to the direction and control of an employer, both as to what must be done and how it must be done, is an employee. It does not matter that the employer allows the employee discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the labor or services, resulting in an employee/employer relationship.]

[(3) If, under the common-law rules, there is an employee/employer relationship, it makes no difference how it is described. It is not controlling whether the employee is called an employee. It is not controlling how the payments are measured, how they are made, or what they are called. It is not controlling whether the individual is employed full time or part time. There is no distinction made between classes of employees. Superintendents, executives, managers, supervisors, and other supervisory personnel are all employees.]

[(4) In applying the common-law rules, the 20-factor test as described in Internal Revenue Service Ruling 87-41 shall be used in determining whether or not an individual is an employee. The degree of importance of each factor varies depending on the labor or services to be performed and the context in which the labor or services are performed. The 20 factors are:]

[(a) Instructions;]

[(b) Training;]

[(c) Integration;]

[(d) Services Rendered Personally;]

[(e) Hiring, Supervising, and Paying Assistants;]

[(f) Continuing Relationship;]

[(g) Set Hours of Work;]

[(h) Full Time Required;]

[(i) Doing Work on Employer's Premises;]

[(j) Order of Sequence Set;]

[(k) Oral or Written Reports;]

[(l) Payment by Hour, Week, Month;]

[(m) Payment of Business and/or Traveling Expenses;]

[(n) Furnishing of Tools and Materials;]

[(o) Significant Investment;]

[(p) Realization of Profit or Loss;]

[(q) Working for More than One Employer at a Time;]

[(r) Making Service Available to General Public;]

[(s) Right to Discharge; and]

[(t) Right to Terminate.]

[Stat. Auth.: ORS 238.650]

[Stats. Implemented: ORS 238.005(7)]