

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

[459-010-0032

Determination of Independent Contractor Status]

[(1) An individual who qualifies as an employee under OAR 459-010-0030 is not an independent contractor. Unless it is clearly established under this rule that a person is an independent contractor, that person shall be deemed to be an employee.]

[(2) An individual or business entity is an independent contractor if the employing entity has the right to control or direct only the result of the labor or service and not the means and methods accomplishing the labor or services. The terms of the contract and the actual arrangement under which labor or services are performed will determine whether an individual or a business entity is subject to direction and control. When the elements of direction and control are present in determining the means and methods of performing labor or service as provided in OAR 459-010-0030, any disclaimers to the contrary are not binding for the purpose of determining an employee/employer relationship by the system.]

[(3) In determining whether or not an individual is an independent contractor, the following factors shall be considered. The degree of importance of each factor varies depending on the labor or service to be performed and the context in which the labor or service are performed:]

[(a) Labor or service are performed only pursuant to written contracts;]

[(b) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance, or liability insurance relating to the labor or services to be provided;]

[(c) The individual or business entity providing labor or service furnishes the tools, equipment, and supplies necessary for performance of the contracted labor or services; or has a significant investment in the facilities used in performing the labor or services;]

[(d) Payment for labor or service is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer. Normal expenses incurred as part of providing labor or service are included in the stipulated payment and are not reimbursed by the employing entity as a routine cost of doing business;]

[(e) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services. The individual or business entity is not required to perform the labor or services personally; but may subcontract part or all of the labor or service to be performed to another party;]

[(f) Labor or services are performed for two or more different persons and/or business entities concurrently within a period of one year;]

[(g) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations, professional occupation licenses, or certificates required by state or local government ordinances for the individual or business entity to conduct business;]

[(h) The individual or business entity actively advertises the availability of the labor or services and represents to the public that the labor and services are to be provided by an independently established business. The following are evidence of "actively advertising":]

[(A) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;]

[(B) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services.]

[(i) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the person income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous years.]

[(4) An individual represented as a Professional Corporation or a sole proprietorship shall qualify as an independent contractor providing the criteria of this rule are met and the element of direction and control in OAR 459-010-0030 are not present.]

[Stat. Auth.: ORS 238.650]

[Stats. Implemented: ORS 238.005]