Welcome!

Independent Contractor vs. Employee
(Annual Refresher Course)
What will be covered today

- Why the process is the way it is
- What the financial impact is for classifying workers as independent contractors or employees.
- The differences (as defined by law) between an independent contractor and an employee.
- Explanation of the process.
- Assigning rates of pay or stipend amounts to independent contractors and employees.
- The supplemental pay form.
Part 1: Independent Contractor Or Employee

Overview

- Federal and state regulations regarding IC and EE differences

- A worker is what he/she is – the status isn’t a choice. It’s a determination based on pre-set criteria.

- Misclassified workers may miss out on key benefits & protections

- There are multiple key factors that determine the difference. No one factor can be used alone to determine status.
The Financial Impact

- 6.25% FICA + 1.45% Medicare = 7.65% employer contribution

- 7% (2010) PERA employer contribution unless:
  - Temporary or seasonal worker – working less than 6 months
  - PERA annuitant
  - Earns less than $425 per month
  - Foreign citizen working with a work permit of less than 3 years
## The Determining Factors

<table>
<thead>
<tr>
<th>Independent contractor</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Advertises his/her services to the general public</td>
<td>• Applies or is recruited to work on the project or perform the activity</td>
</tr>
<tr>
<td>• Provides services to multiple entities</td>
<td>• Doesn’t normally provide the services elsewhere.</td>
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<td>• Decides when, where, and how the work will be performed within broad guidelines</td>
<td>• Is instructed (on some level and with some flexibility) on when, where, and how the work is performed</td>
</tr>
<tr>
<td>• Can subcontract the work or parts of the project to others</td>
<td>• Cannot hire or subcontract others without permission from the employer</td>
</tr>
<tr>
<td>• Can decide what tools to use and what work must be performed to complete the project</td>
<td>• Uses the employer’s tools, supplies, etc.</td>
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<td>• Risks financial profit or loss</td>
<td>• No financial loss to the worker as a direct result of the project</td>
</tr>
<tr>
<td>• Provides a set price for services and risks loss if his/her investment into the project (supplies, mileage, hours, etc.) exceeds the price on which the estimate was based</td>
<td>• The worker is paid by the hour</td>
</tr>
<tr>
<td>• There is a written contract in place prior to services being provided</td>
<td>• Uses the employers facilities</td>
</tr>
<tr>
<td></td>
<td>• There is no financial investment on the part of the worker to perform the service or complete the project</td>
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<td>• Worker has his/her own liability insurance</td>
<td>• The employer is protected under its liability insurance for a claim resulting from the personal behavior or negligence of the worker.</td>
</tr>
<tr>
<td>• Is not covered under the employer’s workers compensation insurance in the event of a work-related injury</td>
<td>• Is covered under workers compensation if injured.</td>
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<td>• Services provided are outside the normal element of the employer’s business</td>
<td>• Services provided are a key aspect of the regular business.</td>
</tr>
<tr>
<td>• Worker risks “breech of contract” claim if quits before end of assignment</td>
<td>• Employee can rightfully resign in the middle of the project.</td>
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The Process

- Determination form is designed to provide customized “next step” instructions based on answers to the questions.

- Automatic determinations to keep it as simple as possible for supervisors.

- Help sheets are available including a step by step walk through on hiring a consultant.

- Paperwork required for either IC or EE now meets federal and state requirements.
Process Defined:

1. Find out if worker will have payment to him/herself as an individual or if payment will be to a company name.

2. If individual, complete the **IC vs EE form**.

3. Follow instructions on form to submit appropriate paperwork.
What to Remember

- The employee can’t choose how they want to be paid. They are what they are based on the job and situation.

- A consultant isn’t automatically an independent contractor

- There is additional paperwork to complete for a new worker, regardless if independent contractor or employee.

- The IC vs EE determination form walks you through the process of what to do next, what needs to be completed, etc. Just follow the instructions on the IC vs EE determination form.

- The form, flow chart, help sheet, etc. are on the district website under the supervisor section at this link: http://hr.spps.org/IC_or_EE.html
Assigning Rates of Pay

Fairness and consistency are important for pay equity laws.

- Make sure funds are available in your budget.
- For employees, follow rates assigned in contract(s) for extra pay.
- Hourly employees should be paid hourly rates – not stipends.
- Human Resources has done research to find market value for various positions and can provide recommended rates.
  - Includes wage info from MN Dept of Economic Security
  - Includes wage info from surrounding MN Public School districts.
Part 2: Supplemental Pay Form

- The form is designed to pay EMPLOYEES for extra work done outside their normal assignment.

- The form will be updated each school year to support rate changes, federal and state regulations regarding wages and satisfy auditor requirements.

- Suggestions for modifications are always welcome!
### Features:

- **Current School Year**
- **Check boxes for types of work options**
- **Pre-approved rates for teachers and non-teachers**
- **Stipend Amounts in Contract**
- **Approved misc assignments for hourly employees at regular rate of pay.**
- **Clearer rate options for salaried or hourly employees**
- **Justification for rate outside of collective bargaining agreement**
- **More employee group options**
- **Fewer spaces to list multiple employees**
Common Problems

- Requests submitted on old forms
- Stipend amounts for hourly employees
- Hourly and salaried employees lumped together on form
- Non teachers are assigned teacher rates of pay
- Different employee types lumped together on same form
- Holding hours for hourly employee to be paid later in the year
- Rates of pay are inconsistent between buildings and often exceed market rate for similar work
- Requests submitted for inactive employees (employee is inactive in system and has not been sent new hire paperwork)
Sections A or B on the form don’t need additional approval – only section C does. So it’s most efficient to use section A or B.

Just because a rate has been paid in previous years, doesn’t mean it will be approved this year or going forward. The rules have changed.

Active teachers should be paid rates of pay listed in the teacher contract. ($18.10, $21.49, or $25.35 for the 2009-10 school year)

Teachers are considered exempt (salaried) employees – not hourly. So if requesting regular rate of pay, use section C, not B.

Stipend amounts not listed in the contract should have an explanation of how amount was derived for justification purposes.

Hourly employees must be paid an hourly rate. Only exempt (salaried) employees can be paid a stipend amount.

When in doubt, ask. Contact the HR Compliance Manager.
Questions?
The End

Thank you for your time!!!