

Charter School Boards & Staff In-Service

Minnesota Employment Law

MN Statute 181

Module No. 3

Independent Contractors versus Employees



Minnesota charter schools are subject to MN Statute 181 - Employment Law. This law is the general employment law in the State of Minnesota that applies to all employers and employees.

One of the fiduciary duties of board members is to know the laws that apply to the school, and the charter school has a legal responsibility to notify employees of the terms and conditions of employment in the public charter school - especially since those terms and conditions are different than employment in traditional public schools.

These In-service Modules provide “bite size” lessons on Minnesota’s Employment Law for use as monthly in-services with public charter school boards and staffs. We hope that charter school boards and administrators will find these in-service modules a helpful tool.

INDEPENDENT CONTRACTORS VERSUS EMPLOYEES

In the 2009 revision of Minnesota’s Charter School Law – MN Statute 124.D 10 - the legislature lists MN Statute 181 as a law with which a charter school and a charter school board must comply. With regard to this law, there are important distinctions to make between employees and independent contractors.

MN Administrative Rule 5224.0340 as well as federal guidelines will be considered when addressing employee vs. contractor status. These distinctions are important in determining whether income taxes, Social Security and Medicare payments are withheld from an employee’s pay and paid to the IRS, but these are not paid if a person is deemed an independent contractor.

The Internal Revenue Service defines Independent Contractors and Employees as such:

Independent Contractor:

The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

Employee:

Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

MN Administrative Rule 5224.0340:

When determining if services are those of an independent contractor or employee, the following factors should also be considered:

Right to discharge

The right to discharge exists if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. There is no right to discharge if an independent worker produces an end result which measures up to contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative

of the right to discharge. Restrictions on the right to discharge because of a contract with a labor union or with other entities are not relevant for purposes of this subpart.

Availability to public

If an individual makes services available to the general public on a continuing basis, independent contractor status is indicated. An individual's services are offered to the public by, among other things:

- A. having an office and assistants;
- B. displaying a sign in front of a place of business;
- C. holding a business license;
- D. having a listing in a business directory or a business listing in a telephone directory; or
- E. advertising in a newspaper, trade journal, or magazine.

Compensation on job basis

Independent contractor status is indicated by payment on a job basis rather than payment by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The granting of a drawing account at stated intervals with no requirement for repayment of the excess drawn over commissions earned or the guarantee of a minimum salary indicates an employment relationship.

Realization of profit or loss

Independent contractor status is indicated where an individual is in a position to realize a profit or suffer a loss as a result of his or her services. Opportunity for higher earnings from piecework or commissions does not indicate an opportunity for profit or loss. An opportunity for profit or loss is indicated by the following factors, among others:

- A. hire, direct, and pay assistants;
- B. provide own office, equipment, materials, or other facilities for doing the work;
- C. continuing and recurring financial liabilities or obligations, relating to the work;
- D. profit or loss in the work depends upon the relationship of receipts to expenditures;
- E. expenses incurred in connection with the work are paid by the individual;
- F. specific jobs are performed for prices agreed upon in advance; and
- G. performance of the services affects the individual's business reputation, and not the business reputation of those who purchase the services.

Termination

The worker's right to terminate the working relationship with the purported employer at will and without incurring liability for non-completion indicates employment. A requirement to provide notice of termination for some period in advance of the termination is not relevant for purposes of this subpart. Independent contractor status is indicated where the individual agrees to complete a specific job, is responsible for its satisfactory completion, and is liable for failure to complete the job.

Substantial investment

A substantial investment by a person in facilities used in performing services for another indicates an independent contractor status. The furnishing of all necessary facilities by the employing unit indicates the absence of an independent contractor status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation. A substantial expenditure of time or money for an individual's education is not indicative of an independent contractor status.

Responsibility

If an employing unit is responsible for the negligence, personal behavior, and work actions of an individual in contacts with customers and the general public during times that services are performed for the employing unit, an employment relationship is indicated.

Services fundamental to business

Employment is indicated where the services provided are necessary to the fundamental business purpose for which the organization exists.

QUESTIONS FOR DISCUSSION WITH BOARDS AND SCHOOL STAFF

1. What is the primary factor that sets an employee apart from an independent contractor?
2. How should an independent contractor be paid?
3. In what case can an independent contractor be legally discharged?
4. What are two steps you can take to ensure a worker is properly classified as an independent contractor?
5. What are several factors that indicate “the opportunity for profit or loss” of a worker?
6. What is meant by “substantial investment”?

ACTIONS

- ✓ All board members, administrative and business management personnel understand the difference between an employee and independent contractor.
- ✓ The board has in place a policy for when and how independent contractors will be utilized by the school.
- ✓ The board ensures that the administration has established procedures for soliciting bids from independent contractors.
- ✓ The board approves the terms and contracts between the school and an independent contractor and regularly monitors the implementation of the contract.