

145-1-42

Services under a contract.

(A) For purposes of ~~Chapter 145. of the Revised Code, and Chapter 145-1 of the Administrative Code, the following definitions apply~~ rule 145-1-41 of the Administrative Code, the board shall consider the following factors in its determination:

(1) "Contract employee" means an individual who:

- (a) ~~Is~~ May be a party to a bilateral agreement which may be a written document, ordinance, or resolution that defines the compensation, rights, obligations, benefits and responsibilities of the individual as an employee;
- (b) Is paid earnable salary at a specific periodic rate for services personally performed for the public employer and who appears on the employer's payroll;
- (c) Is eligible for workers' compensation or unemployment compensation;
- (d) May be eligible for employee fringe benefits such as vacation or sick leave;
- (e) Is controlled or supervised by personnel of the public employer as to the manner of work; ~~and~~
- (f) Should receive an Internal Revenue Service form W-2 for income tax reporting purposes.

(2) "Independent contractor" means an individual who:

- (a) ~~Is~~ May be a party to a bilateral agreement which may be a written document, ordinance, or resolution that defines the compensation, rights, obligations, benefits and responsibilities of both parties;
- (b) Is paid a fee, retainer or other payment by contractual arrangement for particular services;
- (c) Is not eligible for workers' compensation or unemployment compensation;
- (d) May not be eligible for employee fringe benefits such as vacation or sick leave;
- (e) Does not appear on a public employer's payroll;

- (f) Is required to provide his own supplies and equipment, and provide and pay his assistants or replacements if necessary;
 - (g) Is not controlled or supervised by personnel of the public employer as to the manner of work; ~~and~~
 - (h) Should receive an Internal Revenue Service form 1099 for income tax reporting purposes.
- (3) "Personal service contract" means the same as a contract for an independent contractor.
- (B)
- (1)
 - (a) A contract employee is a public employee and shall become a contributor to the public employees retirement system.
 - (b) Contributions are due on the employee's earnable salary, as defined in division (R) of section 145.01 of the Revised Code and rule 145-1-26 of the Administrative Code, which is paid by the public employer to the employee for services actually performed by the employee.
 - (2) An independent contractor is not a public employee and shall not become a contributor to the retirement system.
- (C) Notwithstanding rule 145-1-26 or 145-1-53 of the Administrative Code, if a contract employee performs services for which the employee also receives a payment, fee or commission over and above services for which the employee receives earnable salary, and for which the individual is an independent contractor , the payments for those services over and above their salary services are not earnable salary. The employee is not a member for such additional services, no contributions are due, and no service credit shall be granted.
- (D) An individual who entered into a personal service contract with a public employer prior to August 20, 1976, shall be a member of the retirement system and contributions shall be remitted for the remaining period of the contract if the duties and working relationship are substantially similar to a classification position paid on the payroll of the public employer.

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Certification

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