

Worker Classification: A Critical Issue

The issue of worker status has gotten a lot of attention lately as the Internal Revenue Service (IRS) scrutinizes under-reporting of income by independent contractors and misclassification by the organizations that hire them. It is very important that homeschool group leaders become familiar with employment regulations and taxes before hiring paid teachers.

A homeschool group can hire a worker as an employee or as an independent contractor. The difference can be confusing, but important. The difference depends on how much control the homeschool group has over the worker. The facts of the situation determine worker status, not the homeschool group's preference. For example, If a homeschool co-op hires a teacher and then controls the class content or curriculum, requires teacher training, or evaluates teacher performance, they are treating the teacher as an employee.

Many homeschool organizations that hire teachers pay them as independent contractors. Most homeschool groups are small nonprofits without accounting staff and do not want to deal with the paperwork of withholding and paying employment taxes, creating W-2s, etc. It is easier to deal with a contractor than an employee. But the IRS reminds us that the facts and circumstances of the relationship determine worker status, not the organization's preference.

How to determine worker status

The IRS uses three factors to determine worker classification:

- Behavioral Control,
- Financial Control, and the
- Type of Relationship itself.

Behavioral Control covers whether the business (your homeschool organization) has a right to direct or control how the work is done. This could be through giving instructions or training. In other words, an independent contractor needs no instructions or training to do their job; they already know how to do their job. When my homeschool co-op hired an art teacher, we looked for someone with an art background. We interviewed several possible workers and discussed what we wanted in an art teacher, but we did not tell her how to run a class nor teach art. We exercised no behavioral control since the hired art teacher was an independent contractor.

Financial Control covers whether the business has a right to direct or control the financial aspects of the worker's job. This includes:

Paying Workers in a Homeschool Organization

- The extent to which the worker has unreimbursed business expenses,
- The extent of the worker's investment in the facilities used in performing services,
- The extent to which the worker makes his or her services available to the relevant market,
- How the business pays the worker, and
- The extent to which the worker can realize a profit or incur a loss.¹

A homeschool co-op hired an instructor as an independent contractor to teach a science class. The teacher was expected to carry in any needed equipment and the teacher charged a fee that covered all his expenses, including lab supplies. This kept the co-op independent from the finances of the contractor. Contractors should be paid by the job, not by the hour. Employees are paid by the hour, but contractors are paid for doing a job. I recommend that homeschool groups negotiate a semester rate, not an hourly rate, with contract teachers.

Type of Relationship covers how the parties perceive their relationship. This includes:

- Written contracts describing the relationship the parties intended to create,
- The extent to which the worker is available to perform services for other, similar businesses,
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay,
- The permanency of the relationship, and
- The extent to which services performed by the worker are a key aspect of the regular business of the company.

Many teachers hired by homeschool groups also offer their services to the general public as tutors, teachers, etc. I strongly recommend a signed agreement with every contractor your group pays. It should clearly state that they are hired as independent contractors, not employees. State the length of the agreement, so it is not assumed to be a permanent arrangement. There is a sample independent contractor agreement at the end of this book.

No Benefits to Contractors

Avoid offering your independent contractors any benefits including reduced fees or discounted tuition. I consulted with a homeschool program that was hiring teachers as independent contractors. One teacher enrolled her son in classes and the homeschool group gave her a large tuition discount. Tuition discounts are an employee benefit and should *not* be given to contractors. Benefits are only for employees. The homeschool

¹ From the IRS's Topic 762 - Independent Contractor vs. Employee