

NEW YORK STATE DEPARTMENT OF LABOR
GOV. W. AVERELL HARRIMAN STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12240

**GUIDELINES FOR DETERMINING WORKER STATUS:
TRANSLATING AND INTERPRETING INDUSTRY**

The following are guidelines used by the Unemployment Insurance Division, the Division of Labor Standards and the Division of Safety and Health to establish whether the relationship between an interpreter or a translator and the party engaging their services is an employment relationship or that of an independent contractor.

Independent contractors are excluded from coverage under the Unemployment Insurance Law and are not afforded the protections provided by Labor Standards and Safety and Health requirements. These are persons who are actually in business for themselves and hold themselves available to the general public to perform services. A person is an independent contractor only when free from control and direction in the performance of services. All factors concerning the relationship between the two parties must be taken into consideration to determine if the party contracting for the services exercises, or has the right to exercise supervision, direction or control over the performer. No one single factor is controlling, nor do all factors need to be present to establish the nature of the relationship.

A translator is an individual who translates written materials from one language to another, and an interpreter is a person who translates orally for parties conversing in different languages or in sign language.

Translators and interpreters provide services primarily to parties such as business establishments, governmental entities and academic institutions.

A translation/interpreting service means an organization which is engaged in arranging, coordinating, scheduling, providing or conducting translations of written materials or interpreting verbatim oral statements. The service has overall responsibility to provide a finished product or service. The service contracts directly with a translator or interpreter to perform such services for it. The service may have a staff of translators/interpreters who are admitted employees, and utilizes other individuals to handle unique or additional assignments unable to be completed by its staff.

A translation/interpreting agency is an organization that acts as a referral service for translators/interpreters to clients in need of such services, but has no responsibility to provide a finished product.

The guidelines are based on case law including court decisions and decisions of the Unemployment Insurance Appeal Board which have held that the common law tests of master and servant must be applied in making a determination of whether services rendered by an individual are in the capacity of an employee or an independent contractor. An individual's exposure to a risk of profit or loss as evidenced by investments made or costs assumed, may also be a factor, and is considered in these guidelines.

Employers may request a formal determination of the status of individuals or groups performing services for unemployment insurance purposes by writing to the Liability and Determination Section and furnishing complete details of the relationship. An employer who assumes an individual performs services as an independent contractor and does not report and pay taxes based upon the assumption, may find they are subject to a retroactive assessment, interest, or penalty, if it is later determined through an audit, benefit claim or some other review, that there was an employment relationship. Therefore, it is to the employer's advantage to request a determination when the status of performers is in question.

The Department of Labor is implementing these guidelines with an effective date of July 1, 2000. Therefore, employers may discontinue reporting individuals for unemployment insurance purposes where the application of the guidelines results in a status of independent contractor as of the third quarter of 2000. Please note the prospective nature of the implementation. As a result, the Unemployment Insurance Division will not issue redeterminations and refunds for previously reported individuals.

Employers with questions regarding the interpretation or application of the indicators outlined in the guidelines in relation to an unemployment insurance matter may contact the Liability and Determination Section at (518) 457-2635. Employers with questions in relation to a Division of Labor Standards issue should call (518) 457-4321. Division of Safety and Health issues may be referred to (518) 457-1212.

TRANSLATION/INTERPRETING SERVICE

INDICATORS OF INDEPENDENCE

The strong indicators a translator/interpreter is an independent contractor when performing services for a translation/interpreting service are:

1. The translator/interpreter bids for an assignment with no obligation to accept an approved bid.
2. The translator/interpreter sets or negotiates the rate of pay.
3. The translator/interpreter has an investment in translation/interpreting books, reference books, dictionaries, FAX equipment, beeper, a personal computer and special software packages, or other equipment used in performing the services .
4. The translator/interpreter has an established business as evidenced by business cards, letterhead or business resume with established credentials.
5. The translator/interpreter is free to perform services for any translation/interpreting service or others.
6. The translation/interpreting service does not observe the translator/interpreter while services are performed.

Other indicators a translator/interpreter is an independent contractor when performing services for a translation/interpreting service are:

7. The translator/interpreter is not required by the translation/interpreting service to attend training sessions or to attend meetings or seminars.
8. The translator/interpreter is not required to accept an assignment.
9. The translator/interpreter is not reimbursed for expenses.
10. The translator/interpreter is not required to submit reports.
11. The translation/interpreting service does not oversee the details of the work performance. (The editing or verifying of a completed translation is not indicative of control over the work performance.)
12. The translator/interpreter is not paid for corrections or unsatisfactory work.

INDICATORS OF EMPLOYMENT

The strong indicators a translator/interpreter is an employee when performing services for a translation/interpreting service are:

1. The translator/interpreter is paid at a structured rate established by the translation/interpreting service.
2. The translation/interpreting service provides translation/interpreting books, reference books, dictionaries, fax equipment, beeper, a personal computer or special software packages, or other equipment used in performing the service.
3. The translator/interpreter performs services exclusively for the translation/interpreting service, and is prohibited from performing services for others.
4. The translator/interpreter is required to accept an assignment.
5. The translation/interpreting service makes standard withholding deductions from the translator's/interpreter's fee, e.g., income tax, social security, etc.
6. The translator/interpreter is covered under the translation/interpreting service's Workers' Compensation policy.

Other indicators a translator/interpreter is an employee when performing services for a translation/interpreting service are:

7. The translator/interpreter is required by the translation/interpreting service to attend training sessions or to attend meetings or seminars.
8. The translator/interpreter is reimbursed for expenses.
9. The translation/interpreting service provides substitutes or replacements when the translator/interpreter is unable to report for or complete an assignment.
10. The translator/interpreter is required to systematically account for specific actions and the details of daily activities through daily logs, oral or written reports, or time records.
11. The translator/interpreter is paid for any corrections or unsatisfactory work.
12. The translator/interpreter is regularly evaluated by the translation/interpreting service.
13. The translation/interpreting service reserves the right to oversee the details of the work performance. However, the editing or verifying of a completed translation by the translation service is not indicative of control over the work performance.
14. The translator is required to perform services on the premises of the service or at a location established by the service. Note, this does not apply to an interpreter.
15. The translation/interpreting service handles client complaints.
16. The translator/interpreter is required to notify the translation/interpreting service if services cannot be performed or completed.

NEUTRAL FACTORS

Factors that neither point to an employment or independent contractor relationship are:

1. The translator/interpreter contracts on a job-by-job basis with the translation/interpreting service.
2. The translator/interpreter performs services on a continuing basis over an extended period of time.
3. The translator/interpreter is subject to deadlines.
4. The interpreter is required to perform services on the premises of the service or at a location established by the service. Note, this does not apply to a translator.
5. The translator/interpreter is a member of a translator/interpreter association.

TRANSLATION/INTERPRETING AGENCIES

These indicators are intended to assist in determining the relationship between the translator/interpreter and the agency. A translation/interpreting agency is an organization that acts as a referral service for translators/interpreters to clients in need of such services but has no responsibility to provide a finished product.

INDICATORS OF INDEPENDENCE

The strong indicators a translator/interpreter is not an employee of the translation/interpreting agency are:

1. The client makes the final choice of the translator/interpreter for the assignment or has the right to reject a translator selected by the agency.
2. The translator/interpreter negotiates the rate of pay with the client, or the translator/interpreter authorizes the translation/interpreting agency to negotiate the rate of pay with the client but retains the right of final approval of any assignment.
3. The translator/interpreter has an investment in translation/interpreting books, reference books, dictionaries, FAX equipment, beeper, a personal computer and special software packages, or other equipment used in performing the services.
4. The translator/interpreter has an established business as evidenced by business cards, letterhead or business resume with established credentials.
5. The translator/interpreter is free to perform services for any translation/interpreting agency or others.
6. The translator/interpreter is not paid if the client fails to pay the translation/interpreting agency.
7. The translation/interpreting agency does not observe the translator/interpreter while the services are performed.

Other indicators a translator/interpreter is not an employee of the translation/interpreting agency are:

8. The translator/interpreter is not required by the translation/interpreting agency to attend training sessions, or to attend meetings or seminars.
9. The translator/interpreter is not required to accept an assignment.
10. The translator/interpreter or the client has the responsibility to provide or obtain a replacement. This would also include situations where the client can request the agency to send a replacement.

11. No reports are required to be filed with the translation/interpreting agency, or any reports required are filed directly with the client.
12. The translator/interpreter is not reimbursed by the agency for expenses.

INDICATORS OF EMPLOYMENT

The strong indicators a translator/interpreter is an employee of the translation/interpreting agency are:

1. The translation/interpreting agency makes the final choice of the translator/interpreter who will receive the assignment.
2. The translation/interpreting agency sets the translator's/interpreter's rate of pay.
3. The services are exclusively performed for the translation/interpreting agency, e.g., the translator/interpreter cannot work for other agencies or for the agency's clients.
4. The translation/interpreting agency provides translation/interpreting books, reference books, dictionaries, FAX equipment, a personal computer or special software packages, or other equipment used in performing the services.
5. The translation/interpreting agency pays the translator/interpreter for services performed even if the client does not pay the agency.

Other indicators the translator/interpreter is an employee of the translation/interpreting agency are:

6. The translation/interpreting agency provides substitutes or replacements when the translator/interpreter is unable to report or complete an assignment.
7. The translator/interpreter is required to report to the agency if services cannot be performed or completed.
8. The translator/interpreter is required to systematically account for specific actions and the details of daily activities through daily logs, oral or written reports, or time records.
9. The translator/interpreter is required by the translation/interpreting agency to attend training sessions or to attend meetings or seminars.
10. The translator/interpreter is reimbursed for expenses.
11. The translator/interpreter is paid for unsatisfactory work, and is additionally paid for any corrections.
12. The translator/interpreter is regularly evaluated by the agency based on input from the agency's client.

NEUTRAL FACTORS

Factors that neither point to an employment or independent contractor relationship are:

1. The translator/interpreter is a member of a translator/interpreter association.
2. The translator/interpreter is subject to work deadlines.
3. The translator/interpreter contracts on a job-by-job basis with the agency.
4. The translator/interpreter performs services for the agency over an extended period of time.