

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

**GUIDELINES FOR DETERMINING WORKER STATUS:
MAGAZINE PUBLISHING 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 workers in various magazine publishing industry occupations and the periodicals publisher 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 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 worker. No one single factor is controlling, nor do all factors need be present to establish the nature of the relationship.

These guidelines include services performed for magazine publishing companies by writers, editors, stringers, researchers, proof readers, facts checkers, graphic artists, illustrators, mechanical artists, photographers, videographers, photo coordinators, stylists and technical workers including imaging technicians and electronic pre-press technicians specifically for magazine publishers. Separate guidelines have been issued for publishers of newspapers.

Employers may request a formal determination of the status of individuals 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 on that assumption, may find they are subject to a retroactive assessment, interest, or penalties, if it is later determined through an audit, a claim for benefits, 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 these workers is in question.

The Department of Labor is implementing these guidelines with an effective date of January 1, 2002. 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 first quarter of 2002. 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 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.

A. FACTORS THAT LEAD TO INDEPENDENCE:

1. Magazine pays for information, stories or pictures by the piece or flat rate, or based on negotiations.
2. Amount paid is based on the information, story or picture, and is not based on time spent. Magazine may pay individual for article, picture, or other work even if not published. The rate of pay is established or negotiated by the worker.
3. Individual is free to accept or reject magazine assignments or ideas for information, story or picture without penalty.
4. Individual has an established business as evidenced by business cards or letterhead and/or advertises availability to work for others.
5. Magazine does not provide routine equipment or supplies for use in performing services. Special equipment or supplies may be provided on an occasional basis.
6. Magazine does not reimburse the individual for expenses, other than isolated unusual incidents, or as part of a payment arrangement negotiated by the worker.
7. Services are not required to be performed within the magazine's facility.
8. Individual's services are not exclusive to the magazine, and the individual is free to work for others. A policy that precludes the individual from offering the information, story or pictures to another publication in order to protect the value of the product is not considered a restriction on the individual's right to work for others.
9. The writer or editor may alter the text or layout throughout the development of the product without the approval of the company.
10. Worker may terminate the contract or arrangement with the magazine for reasonable cause.
11. The magazine may reduce the fee or require the individual to redo the work at his/her own expense if it does not meet employer's previously agreed to standards.

B. FACTORS OF EMPLOYMENT:

1. Individual must accept assignments issued by the magazine.
2. Services are performed exclusively for the magazine, and similar services cannot be performed for others.
3. Payment is on an hourly basis, or based on time spent.
4. Payment other than a "kill fee" is made when information, story, or picture is not accepted. Under these conditions, payment is for time and expense and not the product.
5. Services are required to be performed at the magazine's premises.

6. Periodic progress reports are required in order to ensure deadlines are met. A requirement to submit drafts of articles by a specified time is not an indication of control.
7. The magazine specifies that a specific amount of time, or specific time periods, be devoted to providing the services.
8. Services must be performed by the individual; the individual cannot retain a replacement or substitute. The presence of a personal service contract whereby the individual is compensated to retain his/her exclusive service due to the individual's unique talent, skill, ability, or notoriety shall not be an indication of control. A personal service contract might be executed by, but not limited to, a contract, requisition, or purchase order.
9. Individual is paid an additional fee if work must be redone.
10. Worker is routinely reimbursed for expenses.

C. NEUTRAL FACTORS THAT NEITHER POINT TO AN EMPLOYMENT OR INDEPENDENT CONTRACTOR RELATIONSHIP:

1. The magazine may edit the information, story or other material.
2. Individual agrees to provide coverage of events, subjects or territories.
3. The magazine may solicit for workers and interview individuals to check qualifications, interests, or background.
4. A "kill fee" is paid if information, story or picture is not published.
5. The magazine establishes a deadline for completion of the project, but does not regularly monitor progress to ensure deadline is met.
6. The magazine provides a style manual and requires writer or editor to use it.
7. Worker may occasionally meet with company to discuss or consult on the project.
8. The company may prohibit the sale of an article, research or photograph developed at the expense of the company to a competitor.

