



Registrar of Contractors

Substantive Policy Statement: 102

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Licensed Contractors: Independent Contractors and Employees

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

Applicable Law(s):

- A.R.S. § 32-1154(A)
- A.R.S. § 32-1164(A)
- Lundy v. Prescott Valley, Inc., 110 Ariz. 362, 363, 519 P.2d 61 (1974)
- Sobel v. Jones, 96 Ariz. 297, 300, 394 P.2d 415 (1964)
- A.R.S. Title 23, Chapter 3, Article 4

Substantive Policy Statement:

The Registrar of Contractors (ROC) is occasionally asked if and when a licensed contractor can hire independent contractors rather than employees. The question usually describes these independent contractors as; laborers, temporary workers, subcontractors, independent contractors, or 1099 employees. Although various names exist to describe these relationships, these names do not determine whether the individual is legally considered an employee or independent contractor. Understanding whether an individual is an employee or an independent contractor is important because it impacts the licensee's legal obligations. Information to help determine whether a person is an employee or an independent contractor can be found on the IRS website [here](#). If the individual is an employee, the licensee must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid. On the other hand, if the person is an independent contractor, the person needs to have their own ROC license. Licensees may want to consult competent legal advice to be aware of the various legal requirements.

The ROC recognizes that licensees may choose to hire independent contractors for many reasons. While a licensee's decision to hire an employee or an independent contractor does not involve the ROC, licensees should be aware of some ROC statutes that might impact this decision. The following ROC statutes establish grounds upon which a license can be disciplined.

- A.R.S. § 32-1154(A)(4) – Failure to comply with the statutes or rules governing social security, workers' compensation or unemployment insurance.



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- A.R.S. § 32-1154(A)(9) – Aiding or abetting a licensed or unlicensed person to evade this chapter, knowingly or recklessly combining or conspiring with a licensed or unlicensed person, allowing one's license to be used by a licensed or unlicensed person or acting as agent, partner, associate or otherwise of a licensed or unlicensed person with intent to evade this chapter.
- A.R.S. § 32-1154(A)(11) – Failure of a contractor to comply with any safety or labor laws or codes of the federal government, state or political subdivisions of the state.
- A.R.S. § 32-1154(A)(13) – Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification.

In summary, licensees that hire employees must comply with laws governing social security, workers' compensation, unemployment insurance, income taxes, and withholding taxes. Licensees that hire independent contractors must hire only ROC licensed subcontractors. Violation of any of these statutes may result in a license being suspended or revoked. Additionally, the licensure violation of aiding and abetting an unlicensed contractor in A.R.S. § 32-1154(A)(9) may also be a class 1 misdemeanor under A.R.S. § 32-1164(A).

A person hired through a Professional Employer Organization (PEO) is considered an employee of both the PEO and the licensee. On the one hand, the licensee must have the right to direct and control the person's work and remains responsible for quality of that work. On the other hand, the PEO must be registered with the Secretary of State; must maintain a minimum of \$100,000 of financial security or net worth; must pay proper wages, withhold payroll related and unemployment taxes; and is not a temp agency or someone who assigns employees to perform work for other organizations to cover employee absences, handle seasonal workloads, perform special projects, or who customarily attempts to reassign employees to other organizations when the individual completes each assignment. The co-employment relationship is contemplated as being a long term one in which all or a majority of the employees who provide services to a licensee are covered by the agreement. The PEO and the licensee must specify who is responsible for purchasing and maintaining workers' compensation for the covered employees.

The table below lists factors that can help licensees evaluate whether a person is an employee or an independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another. The key is to look at the entire relationship and consider who has the right to direct and control the work. Where these factors point to the licensee as having control over the performance of job duties, or over the means and methods of performing the job, the individual is likely to be an employee. On the other hand, where these factors point to the independent contractor as having control over the performance of job duties, or over the means and methods of performing the job, the individual is likely to be an independent contractor. Licensees may want to consult competent legal advice for guidance in applying these factors.



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| Independent Contractor / Employee Evaluation Factors | | |
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| Independent Contractor <i>(check if yes)</i> | | Employee <i>(check if no)</i> |
| | Can the person determine the hours when the work is performed? | |
| | Can the person hire others to perform the work? | |
| | Does the person supervise their own work? | |
| | Does the person direct the order or sequence in which work or projects are completed? | |
| | Is the person responsible for the quality of the work performed? | |
| | Does the person perform the work without any training from the employer? | |
| | Does the person provide their own tools or materials? | |
| | Can the person work for other clients at the same time? | |
| | Is the person working as a legal business entity (e.g. Corporation, Limited Liability Company, Partnership)? | |
| | Does the person have an ROC license for the work being performed? | |
| | Does the person have an opportunity for profit or loss as a result of the labor or services provided? | |
| | Is the person paid by a flat fee for the specific job or piece of work (not for the number of hours)? | |
| | Is the person responsible for complying with laws governing social security, workers' compensation, unemployment insurance, income taxes, and withholding taxes? | |
| | Does the person perform the work without receiving employee benefits; such as, insurance, pension plan, paid vacation, sick days, and disability insurance? | |
| | Does the person have a reason to expect the relationship is only temporary (e.g. one that will not continue indefinitely)? | |
| | Does the person perform work that is specialized or different from the work performed by the employer? | |