

Employee or Independent Contractor Compliance Self-Assessment For Public Employers

Introduction

Public employers have unique legal requirements for compliance with federal tax and Social Security laws. These employers need to be aware of the rules that apply to them and their workers (both employees and independent contractors); especially those related to federal income, Social Security and Medicare taxes and public retirement system obligations.

The Form 14581 series consists of seven topical employment tax Compliance Self-Assessment tools, listed below, for voluntary use by government entities to conduct self-assessments of their compliance with these requirements. The forms have fillable check box and text fields so they can be completed electronically or printed and completed manually.

For use by Federal, State and Local Government Entities

- Form 14581-A Fringe Benefits Compliance Self-Assessment
- Form 14581-B International Issues Compliance Self-Assessment
- Form 14581-D Other Tax Issues Compliance Self-Assessment
- Form 14581-G Worker Status Compliance Self-Assessment

For use by State and Local Government Entities Only

- Form 14581-C Medicare Coverage Compliance Self-Assessment
- Form 14581-E Retirement Plan Coverage Compliance Self-Assessment
- Form 14581-F Social Security Coverage Compliance Self-Assessment

The self-assessment tools are designed to help public employers identify areas that indicate potential compliance issues. They are intended to be completed by those responsible for withholding and paying employment taxes and filing required information returns. Each topic contains brief information on the law with links to IRS publications and other authoritative resources that provide more information.

Note: The self-assessment tools are intended as general guides to the most common tax issues that public employers may encounter and direct those entities to additional information as necessary. The tools are provided for general information only. They don't constitute legal advice or determinations by the IRS regarding particular tax situations and they don't cover every question that may be encountered. The sources cited should be reviewed for additional information.

Common Errors

The following common errors were identified during IRS audits of public employers:

- Totals shown on Forms 941 or Form 944 do not reconcile with totals on Forms W-2 and W-3, or between these forms and the accounting records.
- Forms W-9 and W-4 are not being used or are not being updated when necessary.
- Failure to backup withhold on payments to vendors when required.
- Failure to correctly complete or file Forms 1099.
- Failure to apply accountable plan rules to reimbursements and allowances.
- Incorrect or missing employment tax deposits.
- Failure to follow electronic filing requirements.
- Treatment of certain groups of workers as independent contractors instead of as employees.
- Failure to pay and withhold Medicare-only tax on rehired annuitants.
- Failure to include taxable noncash benefits in employee wages.
- Failure to apply correct withholding rules to election workers and public officials.

For Assistance While Completing the Self-Assessment Tools:

The following federal tax information applicable to the topics addressed in this Compliance Self-Assessment Tool is available on the IRS website:

- Tools for Federal, State and Local Governments
- Publication 15, Employer's Tax Guide
- Publication 15-A, Employer's Supplemental Tax Guide
- Publication 15-B, Employer's Tax Guide to Fringe Benefits
- Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities
- Publication 963, Federal-State Reference Guide
- Publication 1281, Backup Withholding for Missing and Incorrect Name/TIN(s)
- Publication 1779, Independent Contractor or Employee
- Publication 5137, Fringe Benefit Guide
- Publication 5138, Quick Reference Guide for Public Employers
- Government Retirement Plans Toolkit
- Governmental Plans under Internal Revenue Code Section 401(a)

Employee or Independent Contractor Compliance Self-Assessment For Public Employers

Worker Status – Publication 963

Following are provisions used in making worker classification determinations.

Common Law Rules and Categories of Evidence

Factors that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral Control: Does the company control or have the right to control what the workers do and how the workers do their job

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. The behavioral control factors fall into the categories of:

- Type of instructions given
- Degree of instruction
- Evaluation systems
- Training

2. Financial Control: Are the business aspects of the worker's job controlled by the payer? These include things like how the worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.

Financial control refers to facts that show whether the business has the right to control the economic aspects of the worker's job. The financial control factors fall into the categories of:

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment

3. Type of Relationship: Are there written contracts or employee type benefits (such as pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business

Type of relationship refers to facts that show how the worker and business perceive their relationship to each other. The factors, for the type of relationship between two parties, generally fall into the categories of:

- Written contracts
- Employee benefits
- Permanency of the relationship
- Services provided as key activity of the business

Comments

1. Are all workers properly classified as employees or independent contractors Yes No Follow Up

Note: Under the common-law standards applied by the IRS, there are three categories of evidence, Behavioral Controls, Financial Controls and Relationship of the parties, which should be considered to determine whether the worker is an employee or independent contractor.

See Publication 963, Chapter 4, for information about worker classification.

Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, can be submitted to the IRS to obtain a determination of whether a particular worker is an independent contractor or employee of the entity.

Comments

2. Does the entity have any categories of workers listed in A, B and C, below Yes No Follow Up

If yes, are they classified as employees Yes No Follow Up

a. Elected officials Yes No Follow Up

Note: A public official has authority to exercise the power of the government and does so as an agent and employee of the government. For this reason, the Supreme Court has held that public officials are employees. A public official performs a governmental duty exercised pursuant to a public law. A public office is a position created by law, holding a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public.

Note: Elected officials are subject to a degree of control that typically makes them employees under the common law. Elected officials are responsible to the public, which has the power not to reelect them. Elected officials may also be subject to recall by the public or a superior official. In any event, elected officials are employees for income tax withholding purposes under Internal Revenue Code Section 3401(c).

Examples of public officials include, but are not limited to, governor, mayor, county commissioner, judge, justice of the peace, sheriff, constable, registrar of deeds, building and plumbing inspectors.

Comments

b. Appointed officials Yes No Follow Up

Note: Generally, few appointed officials have sufficient independence such that they will not be considered common-law employees. See Publication 963.

Comments

c. Fee-based positions Yes No Follow Up

Note: In general, if an individual performs services as an official of a governmental entity and the remuneration received is paid from governmental funds, the official is an employee and the wages are subject to federal employment taxes.

Comments

3. Dual-status workers Yes No Follow Up

Do any employees receive Form 1099-MISC, Miscellaneous Income, for services that are substantially similar to services performed by employees and reported as wages on Form W-2

 Yes No Follow Up

If yes, the amounts reported on Forms 1099-MISC should be reported as wages subject to applicable employment taxes and not reported on Form 1099-MISC.

Comments

Notes/Follow-up

You have completed the **Employee or Independent Contractor** Compliance Self-Assessment.