



STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
P.O. BOX 119  
HONOLULU, HAWAII 96810-0119

MAY - 1 2006

**COMPTROLLER'S MEMORANDUM NO. 2006-10**

TO: Heads of Departments

ATTN: Personnel and Fiscal Offices

SUBJECT: Determining Status of Individuals Hired to Perform Services for  
Departments and Agencies

Effective immediately, the following three memorandums titled, "Determining Employer-Employee Relationship" are rescinded:

Comptroller Memorandum No. 1989-7 dated February 22, 1989,  
Comptroller Memorandum No. 1989-22 dated December 6, 1989, and  
Comptroller Memorandum No. 1990-4 dated March 8, 1990

This memorandum incorporates the revised Internal Revenue Service (IRS) guidelines that are to be used to determine whether an individual who is hired to provide services as an "agent", a "consultant", a "firm" or an "independent contractor", should be treated as a vendor or a vendor in an employer-employee relationship ("employee"). To facilitate this determination, program administrators should complete and sign State Accounting Form D-40, EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION. If it is determined that the individual should be treated as an "employee", the individual must be paid through the payroll system to ensure that appropriate taxes are withheld. To place the individual on payroll, State Accounting Form D-41, AUTHORIZATION TO PAY INDIVIDUAL (NON-EMPLOYEE), should be completed to authorize and pay the "employee". This form replaces State DPS Form 5, Notification of Personnel Action, and should be submitted to your departmental fiscal office. The individual's Federal (W-4) and State (HW-4) tax withholding forms and the "Salary Assignment/Cancellation" form (SAFORM D-60) should also be attached to the authorization to pay form.

Departments are reminded that all factors must be considered in the context of the nature of the work to be performed, when completing State Accounting Form D-40, EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION. Departments should seek legal advice from their deputy attorney general in all cases where determination of the individual's status is questionable.

Departments must inform any individual placed on the State payroll system that the individual must be treated as an "employee" for federal and state employment tax requirements only and that no additional benefits result from being placed on the State's payroll system.

Please insure compliance with the requirements of this Memorandum when considering any new, renewed, extended, or otherwise amended contracts with individuals. If you have any questions, please call Wayne Horie, Accounting Division Chief, at 586-0600 or Sheila Walters, Pre-Audit Branch Chief, at 586-0650.

  
RUSS K. SAITO  
State Comptroller

Attachments

- 1) Employee/Employer Relationship Determination, SAFORM D-40, Dated 5/1/06
- 2) Authorization to Pay Individual (Non-Employee), SAFORM D-41, Dated 5/1/06

# STATE OF HAWAII EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION

Name: \_\_\_\_\_

Period of Service: \_\_\_\_\_

Type of Service: \_\_\_\_\_

**Instructions:**

All marked spaces must be completed. (Incomplete forms will be returned.)

All forms must be signed and dated by the responsible State employee acquiring the services.

YES    NO    N/A

**Behavioral Control**

Would the department control or direct the individual providing services as to:

- |   |                          |                          |                          |
|---|--------------------------|--------------------------|--------------------------|
| 1. hours, location, and method the individual is to do the work?                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. provision of supplies, tools, or equipment to the individual?                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. determination of whether or what workers the individual may hire to assist the individual? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. type of supplies and equipment to be used to do the work?                                  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. type of work to be done by other specific individuals?                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. order or sequence of procedures to follow?   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. training provided by the State to do the work in a particular manner?                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Financial Control**

To determine if the department will have right to direct or control the business related aspects of the individual's services to the department, would the individual:

- |  |                          |                          |                          |
|--|--------------------------|--------------------------|--------------------------|
| 1. incur unreimbursed expenses in the performance of the work?             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. have a significant financial investment in the performance of the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. be allowed to continue work outside of that contracted with the State?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. be in a position to make a profit or loss?                              | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



STATE OF HAWAII  
**AUTHORIZATION TO PAY INDIVIDUAL (NON-EMPLOYEE)**

DEPARTMENT	SUB-DIVISION OR SCHOOL	PAYROLL	
		NO.	DIST. CODE

SOCIAL SECURITY NUMBER	NAME (CAPS) LAST, FIRST, MI (not more than 22 characters)
ADDRESS	NUMBER AND STREET
	CITY, STATE, ZIP CODE

MARITAL STATUS <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED	TAX EXEMPTIONS		RETIREMENT CODE		FICA code: E for State Retirees or S for Non-Retirees
	FEDERAL	STATE	GROUP	FICA	
			N		

EFFECTIVE DATE: \_\_\_\_\_ NOT TO EXCEED DATE: \_\_\_\_\_

PAY RATE:    HOURLY \_\_\_\_\_    OR DAILY \_\_\_\_\_    OR MONTHLY \_\_\_\_\_

UNIFORM ACCOUNTING CODE								
F	YR	APP	D	S/D	OBJECT	FUNCTION	LOC	PROJECT

COMMENTS:

AUTHORIZED BY:

\_\_\_\_\_ DATE

\_\_\_\_\_ SIGNATURE

\_\_\_\_\_ PRINT NAME AND TITLE