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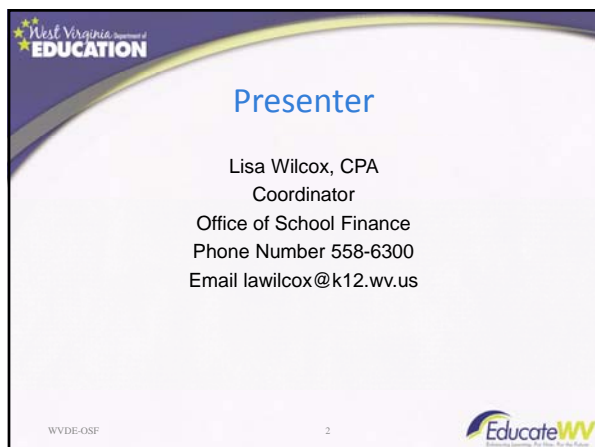
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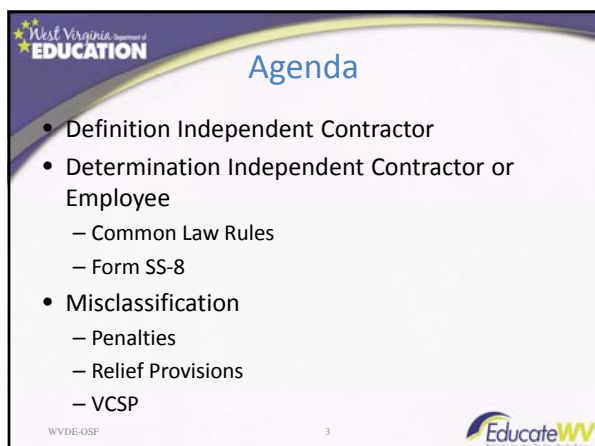
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## Independent Contractor

- People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.

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## Common Law Rules

- Behavioral
  - Does the company control or have the right to control what the worker does and how the worker does his or her job?
    - When and Where to work
      - Company determines specific work days, hours and/locations
    - How to work
      - Company determines sequence of work other than general guidelines
      - Company provides specific training to do the job
      - Company provides tools to do the job

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## Common Law Rules

- Financial
  - Are the business aspects of the worker's job controlled by the payer?
    - Company reimburses expenses
    - Company provides tools and supplies
    - Company determines how worker is paid
      - Hourly, weekly, monthly pay vs. flat fee for job
  - Does the worker make his/her services available to others in the relevant market?
    - Does worker advertise?
    - Does worker maintain a business location?

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Common Law Rules

- Type of Relationship
  - Is there a written contract describing the relationship?
  - Does the company provide benefits to the worker?
    - Health Insurance
    - Sick Leave
    - Vacation Pay
  - How permanent is the relationship?
    - Is the relationship term indefinite?
    - Does relationship end with completion of a project?

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Common Law Rules

- Policy 1224.1 Appendix D
  - Factors that suggest Employee status
    - Instructions by firm
    - Full time required
    - Firm pays business or travel expenses
    - Set hours of work
  - Factors that suggest Independent Contractor Status
    - Worker provides services to more than one firm at a time
    - Worker can realize a profit or loss based on performance
    - Worker hires, supervises and fires own assistants

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Form SS-8

- Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding
  - Filed with IRS to request determination
  - May be filed by the employer or the worker
  - Can take up to six months to get a determination
- Sample form SS-8 included in handout

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Misclassification Penalties

- If Not Willful
  - 100% of employer's share of Social Security and Medicare withholdings
  - 1.5% of employee's wages
  - 20% of Social Security and Medicare withholdings
- If Willful
  - 100% of employer's share of Social Security and Medicare withholdings
  - 3% of employee's wages
  - 40% of Social Security and Medicare withholdings

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Misclassification Relief

- Section 530 of the Revenue Act of 1978
  - Reasonable Basis
    - Court case, IRS ruling, IRS audit, industry standard, etc.
  - Substantive Consistency
    - Must have treated all similar workers as independent contractors
  - Reporting Consistency
    - Must have filed all required federal tax returns consistent with treatment of workers as independent contractors

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Misclassification Relief

- Voluntary Classification Settlement Program (VCSP)
  - Reclassify workers for future periods with partial relief from federal employment taxes
    - Workers must have been treated as independent contractors for previous 3 years and 1099s must have been filed
    - Cannot be under current employment tax audit
  - Pay 10% of employment tax that would have been due based on the "non willful" rates discussed previously for the compensation paid in the most recent tax year

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Additional Misclassification Issues

- Medicaid
  - Misclassification of vendors could cause cost settlement disallowances
  - Could cause a change to our cost settlement methodology where contractors would have to participate in RMTS instead of deducting contracted services expense without applying the RMTS percentage

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Additional Misclassification Issues

- Affordable Care Act
  - ACA penalty could apply if it was determined that any misclassified worker should have been offered health insurance coverage
  - ACA penalty for not offering coverage to “substantially all” employees (95%) is \$2,000 per EACH full-time employee minus the first 30
  - ACA penalty would apply in addition to federal employment tax penalties

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Questions



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West Virginia Department of Education  
Office of School Finance

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# Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding

► Information about Form SS-8 and its separate instructions is at [www.irs.gov/formss8](http://www.irs.gov/formss8).

OMB. No. 1545-0004

For IRS Use Only:  
Case Number:

Earliest Receipt Date:

Name of firm (or person) for whom the worker performed services		Worker's name	
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)

**Note.** If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ► \_\_\_\_\_

## Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* in the separate instructions for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

**Parts I-V.** All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

## Part I General Information

- This form is being completed by: ☐ Firm ☐ Worker; for services performed \_\_\_\_\_ to \_\_\_\_\_ .  
(beginning date) (ending date)
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). \_\_\_\_\_  
\_\_\_\_\_
- Total number of workers who performed or are performing the same or similar services: \_\_\_\_\_
- How did the worker obtain the job? ☐ Application ☐ Bid ☐ Employment Agency ☐ Other (specify) \_\_\_\_\_
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings).** In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ \_\_\_\_\_.  
If both Form W-2 and Form 1099-MISC were issued or received, explain why. \_\_\_\_\_
- Describe the firm's business. \_\_\_\_\_  
\_\_\_\_\_

**Part I General Information** (continued)

- 7 If the worker received pay from more than one entity because of an event such as the sale, merger, acquisition, or reorganization of the firm for whom the services are performed, provide the following: Name of the firm's previous owner: \_\_\_\_\_  
 Previous owner's taxpayer identification number: \_\_\_\_\_ Change was a: ☐ Sale ☐ Merger ☐ Acquisition ☐ Reorganization  
☐ Other (specify) \_\_\_\_\_  
 Description of above change: \_\_\_\_\_  
 Date of change (MM/DD/YY): \_\_\_\_\_
- 8 Describe the work done by the worker and provide the worker's job title. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 9 Explain why you believe the worker is an employee or an independent contractor. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 10 Did the worker perform services for the firm in any capacity before providing the services that are the subject of this determination request?  
☐ Yes ☐ No ☐ N/A  
 If "Yes," what were the dates of the prior service? \_\_\_\_\_  
 If "Yes," explain the differences, if any, between the current and prior service. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 11 If the work is done under a written agreement between the firm and the worker, attach a copy (preferably signed by both parties). Describe the terms and conditions of the work arrangement. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Part II Behavioral Control** (Provide names and titles of specific individuals, if applicable.)

- 1 What specific training and/or instruction is the worker given by the firm? \_\_\_\_\_  
 \_\_\_\_\_
- 2 How does the worker receive work assignments? \_\_\_\_\_  
 \_\_\_\_\_
- 3 Who determines the methods by which the assignments are performed? \_\_\_\_\_
- 4 Who is the worker required to contact if problems or complaints arise and who is responsible for their resolution? \_\_\_\_\_
- 5 What types of reports are required from the worker? Attach examples. \_\_\_\_\_  
 \_\_\_\_\_
- 6 Describe the worker's daily routine such as his or her schedule or hours. \_\_\_\_\_  
 \_\_\_\_\_
- 7 At what location(s) does the worker perform services (for example, firm's premises, own shop or office, home, customer's location)? Indicate the appropriate percentage of time the worker spends in each location, if more than one. \_\_\_\_\_  
 \_\_\_\_\_
- 8 Describe any meetings the worker is required to attend and any penalties for not attending (for example, sales meetings, monthly meetings, staff meetings). \_\_\_\_\_
- 9 Is the worker required to provide the services personally? . . . . . ☐ Yes ☐ No
- 10 If substitutes or helpers are needed, who hires them? \_\_\_\_\_
- 11 If the worker hires the substitutes or helpers, is approval required? . . . . . ☐ Yes ☐ No  
 If "Yes," by whom? \_\_\_\_\_
- 12 Who pays the substitutes or helpers? \_\_\_\_\_
- 13 Is the worker reimbursed if the worker pays the substitutes or helpers? . . . . . ☐ Yes ☐ No  
 If "Yes," by whom? \_\_\_\_\_



**Part III Financial Control** (Provide names and titles of specific individuals, if applicable.)

- 1 List the supplies, equipment, materials, and property provided by each party:  
The firm: \_\_\_\_\_  
The worker: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 2 Does the worker lease equipment, space, or a facility? . . . . . ☐ Yes ☐ No  
If "Yes," what are the terms of the lease? (Attach a copy or explanatory statement.) \_\_\_\_\_
- 3 What expenses are incurred by the worker in the performance of services for the firm? \_\_\_\_\_
- 4 Specify which, if any, expenses are reimbursed by:  
The firm: \_\_\_\_\_  
Other party: \_\_\_\_\_
- 5 Type of pay the worker receives: ☐ Salary ☐ Commission ☐ Hourly Wage ☐ Piece Work  
☐ Lump Sum ☐ Other (specify) \_\_\_\_\_  
If type of pay is commission, and the firm guarantees a minimum amount of pay, specify amount. \$ \_\_\_\_\_
- 6 Is the worker allowed a drawing account for advances? . . . . . ☐ Yes ☐ No  
If "Yes," how often? \_\_\_\_\_  
Specify any restrictions. \_\_\_\_\_
- 7 Whom does the customer pay? . . . . . ☐ Firm ☐ Worker  
If worker, does the worker pay the total amount to the firm? ☐ Yes ☐ No If "No," explain. \_\_\_\_\_
- 8 Does the firm carry workers' compensation insurance on the worker? . . . . . ☐ Yes ☐ No
- 9 What economic loss or financial risk, if any, can the worker incur beyond the normal loss of salary (for example, loss or damage of equipment, material)? \_\_\_\_\_
- 10 Does the worker establish the level of payment for the services provided or the products sold? . . . . . ☐ Yes ☐ No  
If "No," who does? \_\_\_\_\_

**Part IV Relationship of the Worker and Firm**

- 1 Please check the benefits available to the worker: ☐ Paid vacations ☐ Sick pay ☐ Paid holidays  
☐ Personal days ☐ Pensions ☐ Insurance benefits ☐ Bonuses  
☐ Other (specify) \_\_\_\_\_
- 2 Can the relationship be terminated by either party without incurring liability or penalty? . . . . . ☐ Yes ☐ No  
If "No," explain your answer. \_\_\_\_\_
- 3 Did the worker perform similar services for others during the time period entered in Part I, line 1? . . . . . ☐ Yes ☐ No  
If "Yes," is the worker required to get approval from the firm? . . . . . ☐ Yes ☐ No
- 4 Describe any agreements prohibiting competition between the worker and the firm while the worker is performing services or during any later period. Attach any available documentation. \_\_\_\_\_
- 5 Is the worker a member of a union? . . . . . ☐ Yes ☐ No
- 6 What type of advertising, if any, does the worker do (for example, a business listing in a directory or business cards)? Provide copies, if applicable. \_\_\_\_\_
- 7 If the worker assembles or processes a product at home, who provides the materials and instructions or pattern? \_\_\_\_\_
- 8 What does the worker do with the finished product (for example, return it to the firm, provide it to another party, or sell it)? \_\_\_\_\_
- 9 How does the firm represent the worker to its customers (for example, employee, partner, representative, or contractor), and under whose business name does the worker perform these services? \_\_\_\_\_
- 10 If the worker no longer performs services for the firm, how did the relationship end (for example, worker quit or was fired, job completed, contract ended, firm or worker went out of business)? \_\_\_\_\_



**Part V For Service Providers or Salespersons.** Complete this part if the worker provided a service directly to customers or is a salesperson.

- 1 What are the worker's responsibilities in soliciting new customers? \_\_\_\_\_
- 2 Who provides the worker with leads to prospective customers? \_\_\_\_\_
- 3 Describe any reporting requirements pertaining to the leads. \_\_\_\_\_
- 4 What terms and conditions of sale, if any, are required by the firm? \_\_\_\_\_
- 5 Are orders submitted to and subject to approval by the firm? . . . . . ☐ Yes ☐ No
- 6 Who determines the worker's territory? \_\_\_\_\_
- 7 Did the worker pay for the privilege of serving customers on the route or in the territory? . . . . . ☐ Yes ☐ No  
 If "Yes," whom did the worker pay? \_\_\_\_\_  
 If "Yes," how much did the worker pay? . . . . . \$ \_\_\_\_\_
- 8 Where does the worker sell the product (for example, in a home, retail establishment)? \_\_\_\_\_
- 9 List the product and/or services distributed by the worker (for example, meat, vegetables, fruit, bakery products, beverages, or laundry or dry cleaning services). If more than one type of product and/or service is distributed, specify the principal one. \_\_\_\_\_
- 10 Does the worker sell life insurance full time? . . . . . ☐ Yes ☐ No
- 11 Does the worker sell other types of insurance for the firm? . . . . . ☐ Yes ☐ No  
 If "Yes," enter the percentage of the worker's total working time spent in selling other types of insurance . . . . . \_\_\_\_\_ %
- 12 If the worker solicits orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments, enter the percentage of the worker's time spent in the solicitation . . . . . \_\_\_\_\_ %
- 13 Is the merchandise purchased by the customers for resale or use in their business operations? . . . . . ☐ Yes ☐ No  
 Describe the merchandise and state whether it is equipment installed on the customers' premises. \_\_\_\_\_

**Sign  
Here**

Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented are true, correct, and complete.



Type or print name below signature.

Title ►

Date ►