



# State of New Hampshire Department of Labor

## Criteria to Establish an Employee or Independent Contractor

**“Employee” means** and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work.

(e) The person holds himself or herself out to be in business for himself or herself.

(f) The person has continuing or recurring business liabilities or obligations.

(g) The success or failure of the person’s business depends on the relationship of business receipts to expenditures.

(h) The person receives compensation for work or services performed and remuneration is not determined unilaterally by the hiring party.

(i) The person is responsible in the first instance for the main expenses related to the service or work performed. However, this shall not prohibit the employer or person offering work from providing the supplies or materials necessary to perform the work.

(j) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(k) The person supplies the principal tools and instrumentalities used in the work, except that the employer may furnish tools or instrumentalities that are unique to the employer’s special requirements or are located on the employer’s premises.

(l) The person is not required to work exclusively for the employer.

**Inspection Division  
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**David Wihby  
Deputy Labor Commissioner**

**George Copadis  
Labor Commissioner**

**THIS NOTICE MUST BE POSTED IN A CONSPICUOUS PLACE**

**Eff. 01/01/08**