



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

---

*James P. G. Longo*

the name and title of the individual who will have direct supervisory responsibilities for the staff and providing the supervisor's resume to document an appropriate level of experience.

Criteria have been established to distinguish an employee from a person in a contractual relationship. The NYS Worker's Compensation Board advises that to the extent that a program controls the work and provides direct supervision of the teacher, the relationship entails employment (W-2) and not independent contract (1099 form). The existence of an employment relationship depends on the factual context of a particular situation or setting. To demonstrate this, the individual must be a W-2 employee such that the employer is subject to federal social security and withholding taxes and other factors that indicate the existence of an employment relationship. Additional relevant factors that may be considered to determine the existence of an employment relationship include the following:

- the degree of the employer's dominion and control over the autonomy of the employee, such as, whether the individual is required to follow the instructions of the provider relating to when, where and how he or she is to work;
- whether the employer requires the submission of written reports and provides training;
- the degree of oversight the employer has over the employee's work product, such as, does the employer set the order of work to be performed; and
- whether the employer establishes the hours of work.

This memorandum is meant to supplement, not replace previous guidance