

## **Independent Contractor Vs. Employee Definitions**

For a person to be an independent contractor, the alleged employer must demonstrate ALL three of the following criteria:

1. The person is free from control and direction in performing the job, both under contract and in fact.
2. The umpire is performing an umpire service outside of the usual course of business for the company.
3. The umpire is engaged in an independently established trade, occupation or business that is similar to the service s/he performs

Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

Instructions that the business gives to the worker. An employee is generally subject to the business' instructions about when, where and how to work. All of the following are examples of types of instructions about how to do the work.

- When and where to do the work – The umpire sets his own hours to work through his availability he creates on Arbiter Sports software. Even after saying he is available to work he can still decline the assignment.
- What tools or equipment to use – The umpire provides all equipment and gear to work the game. He is not reimbursed for any expenses. He agrees to work based on the fee for the game.
- What workers to hire or to assist with the work – The umpire is free to hire someone additional to work the game. This is not a normal practice except for scrimmage games where a second umpire may benefit from working the game as a learning tool. No additional fee is paid.
- Where to purchase supplies and services – There are thousands of stores throughout the country where umpires can purchase their own supplies and gear.
- What work must be performed by a specified individual – The umpire is certified to work games similar to a worker being licensed no other qualification is necessary.
- What order or sequence to follow – Umpire certification and training direct the umpire's order and sequence to follow not the assigner.

## **Financial Control.**

Facts that show whether the business has a right to control the business aspects of the worker's job include:

- The extent to which the umpire has unreimbursed expenses – The umpire is not reimbursed for any expenses or on-going fixed costs incurred whatsoever. The fee for working the game accepted is the only payment in the contractual agreement.
- The umpire\independent umpire invests solely in his own equipment and gear to perform his umpire services.
- The extent to which the worker makes his services available to the relevant market. The umpire\independent contractor is free to seek out business opportunities. It is common place for umpires to work two to three sports and two to three skill-set levels within each sport. For example, it is common for an umpire to work a college or high school baseball game for the NCAA baseball assigner or local high school baseball assigner in the afternoon and then to work a men's baseball game at 8pm the same day for the Men's Baseball assigner in Long Island. It is

also common practice for a baseball umpire to work high school baseball at 4pm and a recreation league basketball game at 830pm the same day.

- How the business pays the worker – The umpire is guaranteed a flat fee for the game worked that is paid before the game. Many large Leagues pay the assigner one check for many independent contractors to reduce their operating expenses and workload and corresponding costs. The assigner must accept this payment method or lose the business from the League to another assigner who will accept this method. It is the assigner's responsibility to set up specific procedures to pay umpire\ independent contractors properly. These procedures increase operating costs to the assigner who is taking on more of the League's work in order to retain the League's business.

The extent to which the umpire can realize a profit or loss – The umpire is in sole and direct control of the profit or loss he makes based on his fees earned and expenses incurred.

### **Type of Relationship**

Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create – the umpire creates and submits his availability to the assigner and accepts games based on his availability submitted.
- Other than the fee accepted by the umpire for working the game, no additional benefit is provided such as employee-type benefits, insurance, pension plan, vacation pay or sick pay.
- The permanency of the relationship – There is no expectation on the part of the umpire or the assigner that the relationship will continue indefinitely. The game worked is a specific contracted job and is evidence that the relationship intent was that of an independent contractor.

The extent to which services performed by the umpire are a key aspect of the regular business of the company – The assigner does not have the right to direct or control the schedule or the work of the umpire. It is the umpire\independent contractor who directs\tells The AFU Group assigner as well and all assigners when he will be available to work and controls how the work of umpiring the game is to be accomplished. This would define the umpire as an independent contractor