



State Procurement Manual

Department of Administration, State Bureau of Procurement

Number
PRO-608

Section ADMINISTRATIVE POLICY	Effective 9/16/19	Replaces PRO-I-11, I-12 Various
Title EMPLOYER-EMPLOYEE ISSUES: COMMON LAW FACTORS AND CONTRACTING WITH STATE EMPLOYEES		Page 1 of 3

SCOPE: The purpose of this policy is to establish the importance of avoiding employer-employee relationships in state contracting, and to establish official procedure when contracting with a state employee.

POLICY: An essential intention of a services purchase is the independent entrepreneurial relationship between the contractor and the state, i.e., exclusion of an employer-employee relationship. The existence of a contract does not, alone, negate the existence of an employer-employee relationship.

Common Law Factors

An employee under the Social Security Act is "any person who under the usual common law rules applicable in determining employer-employee relationship has the status of an employee."

According to the federal Internal Revenue Service (IRS), facts that provide evidence of the degree of control and independence ("common law rules") fall into three categories; behavioral, financial and type of relationship.

Additional information about the factors that fall into these categories can be found at <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>.

Contracting with State Employees

Section 16.417, Wis. Stats., prohibits an individual who is a State of Wisconsin employee or who is retained as a contractor full-time by a state agency from being retained as a contractor by the same or another state agency where the individual receives more than \$12,000 as compensation for their services during any 12-month period.

Contracting with a state employee for services where reimbursement for those services will be made in addition to the compensation the employee



Legal Authority

Wis. Stats. 16.417(2); 16.71; Ch. 19, Sub. III;
20.901(1)(a); 230.047
Wis. Adm. Code Chapter ER-Pers 24

Authorized:
Sara Redford, Director
State Bureau of Procurement

Agencies Affected: All, unless otherwise noted



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receives from regular employment with the state should be given careful consideration to ensure compliance with applicable state statutes.

PROCEDURE:

- I. Employer-Employee
 - A. Agencies will ensure, at a minimum, that all services contracts contain standard terms related to the independent capacity of the contractor and its subcontractors. Use of form DOA-3681, Supplemental Standard Terms and Conditions, facilitates compliance with this requirement. See PRO-404, Standard Terms and Conditions.

II. Contracting with State Employees

State agencies considering contracting with state employees should determine the following:

- A. Is there a possible conflict of interest or violation of the Code of Ethics? See Chapter 19, Subchapter III, Code of Ethics for Public Officials and Employees and Wis. Adm. Code Chapter ER-Pers 24, Code of Ethics for State Employees.
- B. Does the employee work for another agency, and has the possibility of an interchange program as provided for in the statutes been pursued? Refer to s. 20.901(1)(a) and s. 230.047, Wis. Stats.
- C. Does the employee have the approval of their agency to engage in this type of additional employment for another agency?



Legal Authority

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- D. Is the arrangement compliant with §16.417(2), Wis. Stats?
- E. If there is any question regarding contracting with a state employee, then an opinion regarding such employment should be requested from the State Ethics Commission for unclassified officials identified in Wis. Stat. s. 19.42(10), or the DOA, Division of Personnel Management, Bureau of Merit, Recruitment and Selection for classified positions and any other unclassified positions. The opinion received, or such other justification, will be a part of the transaction record.



Legal Authority

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