

Consultants Contracted Services

Although the Division for Youth has no policy on the use of consultants, it strongly suggests following the guidelines for the classification of employees and consultants. The improper classification of an employee as a consultant for purpose of avoiding payment of taxes clearly puts the Division for Youth at jeopardy when grant money is diverted from appropriate program purposes to the payment of back taxes plus fines and penalties. Also, an employee, not a consultant, is covered by unemployment benefits and worker's compensation benefits. If a person is being paid as a consultant and later applies for unemployment or worker's compensation, a determination may be made that the person should have been paid as an employee and charges for these benefits would be made against the employer.

Also, if a person is being paid as an employee, he or she can't also be paid as a consultant by the same employer. Neither can two people be treated differently while doing the same type of work. A review of each position will determine whether it should be considered for employee status or consultant status. Some of the most important factors are:

- The type of service should be considered. If the services are ongoing, they would more likely fit into an employee type of position. If they are one time or variable (once a month), they might be better treated as a consultant.
- The work schedule should be considered. If it is fixed and the person must be at work as required by the work schedule, then an employee status is justified. If it is not fixed and the person can perform the work as desired within the confines of contract requirements, then they are a consultant.
- An employee can be discharged at will. A consultant works in accordance with a contract and can only be discharged within the provisions of the contract.
- A consultant provides and pays for his or her own training, supplies, and helpers.
- A consultant most often performs work for many different companies while an employee usually works for only one employer

When contracting with a consultant to provide a service you must enter into a written contract which sets forth payment schedules, performance objectives and time indicators. Each contract must be fully executed prior to any expenditures being incurred and must be kept on file at the agency. Such contracts must be made available to any DFY representative upon request.

Source: NY State Division for Youth, Fiscal Policies & Procedures, January 1997