

Independent Contractors

Coaching and Officiating
Youth Soccer

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National Trend

Youth soccer clubs across the country have traditionally relied on independent contractors to coach and officiate.



National Trend

The IRS and other state and federal agencies have increasingly scrutinized, criticized, and challenged this practice.



BWC

O.R.C. 4123.01(A)(1)(b): Every person who is in the service of any person, partnership, firm, association, or corporation, or who is in the service of any other person or persons, whether or not the person or persons are under any contract, express or implied, oral or written . . . who are workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer. . . .

Independent Contractors are not employees.



Independent Contractor/Employee Questionnaire

Injured worker name: _____ Claim number: _____

Question	Yes	No
1) Is the person required to comply with instructions from the other contracting party regarding the manner or method of performing services?		
2) Is the person required by the other contracting party to have particular training?		
3) Are the person's services integrated into the regular functioning of the other contracting party?		
4) Is the person required to perform the work personally?		
5) Was the person hired, supervised, or paid by the other contracting party?		
6) Does a continuing relationship exist between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time?		
7) Are the person's hours of work established by the other contracting party?		
8) Is the person required to devote full time to the business of the other contracting party?		
9) Is the person required to perform the work on the premises of the other contracting party?		
10) Is the person required to follow the order of work set by the other contracting party?		
11) Is the person required to make oral or written reports of progress to the other contracting party?		
12) Is the person paid for services on a regular basis such as hourly, weekly, or monthly?		
13) Are the person's expenses paid for by the other contracting party?		
14) Are the person's tools and materials furnished by the other contracting party?		
15) Is the person provided with the facilities used to perform services?		
16) Does the person fail to realize a profit or suffer a loss as a result of the services provided?		
17) Does the person only perform the service for this specific employer, rather than a number of employers at the same time?		
18) Does the person choose not to make the same services available to the general public?		
19) Does the other contracting party have a right to discharge this person?		
20) Does the person have the right to end the relationship with other contracting party without incurring liability pursuant to an employment contract or agreement?		

Signature of person completing the questionnaire: _____ Date: _____



Key Factors for Ohio BWC

The principal issue is whether the employer reserves the rights to control the manner or means of doing the work.

And

Whether the service provided is the core function of the organization.



Key Factors for Ohio BWC

Who:

- controls the details and quality of the work;
- controls the hours worked?
- Selects the materials, tools, and personnel used?

If the answer is the employee/contractor, then it is probably an independent contractor.



Key Factors for Ohio BWC

An independent contractor:

- Does not work regularly for an employer.
- Is available to work for others.
- Often advertises, maintains a visible business location, and is available to work in a trade, or some other service.



Key Factors for Ohio BWC

Other Factors:

- Length of employment
- Type of business
- Method of payment
- Any pertinent agreements or contracts



IRS

The Internal Revenue Service has said it will review on a case by case basis.

Does the employer had a reasonable basis for treating the workers as independent contractors?



IRS Factors

Three broad categories:

1. Behavioral control
2. Financial control, and
3. The type of relationship between the worker and employer



1. Behavior Controls

Does the organization have the *right* to control the independent contractor?

If yes, then likely an employee.



IRS Behavior Control Factors

- Do you **set the worker's hours**?
- Do you **restrict the worker's freedom as to when and for whom he will work**?



IRS Behavior Control Factors

- Do you **need to instruct** the person about when, where, and how to work?
- Do you need to **train** the worker to do the job?
- Are the services rendered personally by the worker or **can the person delegate the work?**



IRS Behavior Control Factors

- Do you have a **high level of supervision** over the person?
- Do you **pay the person's travel** and other expenses?
- Do you **furnish his or her tools and materials**?

If “yes” then this may be an employee.



2. Financial Controls

Does the organization have the right to control the economic aspects of the worker's job?

If yes, then likely an employee.



IRS Financial Control Factors

- Can the person earn a **profit or loss**?
- Does the person perform similar services for more than one business at a time?
- Does the person make his services available to the public?
- Do you **pay by job** instead of by time?

If “no” then this may be an employee.



3. Type of Relationship

Does the relationship, for all intents and purposes, appear to be that of employer / employee?

If it walks like a duck, quacks like a duck, and looks like a duck, then its an employee.



IRS Relationship Factors

- Do you have the **right to fire** the person even if they meet your contract specifications?
- Are you responsible for the worker's assistants or subordinates?



IRS Relationship Factors

- Is there a **continuing relationship** with this worker?
- Are the **services** provided key to, and **integrated into, the organization**?

If “yes” then this may be an employee.



How have all the factors from all the tests been applied recently across the country?



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Officials

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833 F.Supp.2d 882 (N.D.Ill. 2011)

Marcel YONAN, Plaintiff,

v.

UNITED STATES SOCCER FEDERATION, INC.,
Defendant.

No. 09 C 4280.

United States District Court, N.D. Illinois, Eastern
Division.



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Officials

Referee filed an ADEA claim against a US Soccer Federation.
The court said he was not an employee, but an independent contractor:

- He could work any games he wanted
- He was not supervised (although his performance after games was evaluated)
- The federation did not control how he refereed games
- Officiated for many different organizations.



Officials

- Officials have **complete discretion** and authority to enforce the rules, control the game, and discipline players and coaches as necessary.
- Requires a great deal of independent skill, ability, judgment, and knowledge. **They are experts.**



Officials

- Officials are **trained** and usually **certified** and / or **licensed**.
- Usually **members of referee associations** and sign up for games sponsored by leagues, clubs, schools, camps, etc.



Coaches

Courts and the IRS have recently and repeatedly found that youth soccer coaches are employees, and not independent contractors.



Coaches

Youth Soccer Group Agrees to Withhold Taxes From Coaches

By TINA KELLEY AUG. 2, 2007



Scott Robins, a coach, center, and Jay Skelton, president of the Fairfield United Soccer Association, last year.
Daniel Barry for The New York Times

In a case widely watched by youth sports leagues across the country, the Internal Revenue Service has reached an agreement with the Fairfield
audit that found the

It's Goal

By TINA KELLEY JUN

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Coaches

IRS demanded \$334,441 in back taxes and fines.

- League settled and agreed to pay \$11,600 in back taxes and agreed to classify half of its coaches as employees.
- The other half were already employees of a professional coaching association.



Other Recent IRS Cases

- *2008 IRS v. Arlington Soccer Association*: Coaches required to be classified as employees
- *2010 IRS McLean Youth Soccer Association*: IRS audit found coaches are employees. IRS threatened to remove nonprofit status; and
- *2013 IRS v. Fredericksburg Soccer Association*: IRS Audit determined coaches are employees.



Your Challenging Analysis

- Multiple competing tests [BWC, IRS, Dept. of Labor, etc]
- Worker may be an independent contractor for one purpose and an employee for another.
- When balancing various factors, it is often difficult to have certainty



Factors Favoring Contractor

- No exclusive agreements
- Bring their own equipment
- No training
- Coaches work for many different organizations
- May be no formal evaluation process
- No continuing relationship



Factors Favoring Employee

- Payment may be for time and not job completion
- Coaches may follow pre-determined curriculum
- Coaches do not have discretion to hire their own help or delegate
- Usually a long-term relationship with their team



What To Do?

Have a written contract with your independent contractors.

Work with an attorney.

Ensure that the coaches are already trained, licensed, and or certified.



What **Not** To DO?

Do not use words such as employee, wage, employer, etc. in your contracts.

Do not set hours for coaches. Let them choose the hours.

Do not restrict their ability to coach for other organizations.



What **Not** To DO?

Do not supervise or provide performance evaluations.

Do not pay by the hour.

Do not provide the training equipment. Encourage the coaches to use their own training equipment.

Do not control how they coach.



Summary

- The trend is clearly moving toward classifying independent contractor coaches as employees.
- It is becoming increasingly difficult to classify independent contractors as employees.
- Given the potential liability, organizations may want to consider moving from independent contractors to employees.

