



Montana Teachers' Retirement System

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TRS Office Use Only

FORM 148: Determination of Independent Contractor Status

Alternative accessible formats of this document will be provided upon request.

Please note:

- As used in this form, "Independent Contractor" or "IC" refers to the worker purported to be an IC. Use of the term is not acknowledgement that the individual is actually an IC or that the employer may treat the individual as such prior to the conclusive establishment of the worker's status as an IC.
- Use of the term "employer" in this form means the TRS employer on whose behalf this analysis report is provided.
- Use of the term "position" in this form refers to the duties and functions performed by the IC on behalf of the TRS employer, regardless of the position/job title applied by the TRS employer.

More information about establishing IC status is available in the Employers section of the TRS website (trs.mt.gov).

EMPLOYER TO COMPLETE:

1. Name of TRS employer: _____
2. If applicable, provide information about the third-party hiring agent.
Full name of agent: _____ Phone: _____
Agent's mailing address: _____
3. Full name of IC: _____ Last 4 digits of SSN: _____
IC's current membership status with TRS: ☐ active ☐ inactive ☐ retired ☐ non-member
4. Title of job/position for which IC is hired: _____
 - *Attach a copy of the job/position description and/or a copy of contract for the IC's services.*
5. Specifically describe the duties and functions to be performed by the IC on behalf of the employer. Do not reiterate the job/position title in Question 4 but provide a more granular description of the *specific* work to be performed by the IC. _____

- 6a. If determination is provided in a **court order**, attach a copy of the court order. If provided in an **IRS SS-8 determination**, attach a copy of the SS-8 application materials and the final IRS determination.
Mark the appropriate box: ☐ Court Order is attached ☐ IRS SS-8 determination is attached
- OR
- 6b. If determination is provided by a **qualified analyst**, a copy of their written determination must be attached and certification on Page 2 must be completed by the qualified analyst.

Signature of Employer

Date

EMPLOYER: If **6a** applies, complete and sign this page and return to TRS along with either the court order or the IRS SS-8 determination. If **6a** does not apply, **Page 2** of this form must be completed and signed by a qualified analyst. Return the entire form and the qualified analyst's written determination to TRS.



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QUALIFIED ANALYST TO COMPLETE:

7. Full name of individual completing this analysis (Analyst): _____
Job title and/or professional designation: _____
Analyst's employer or business name: _____
Address: _____
Phone: _____ Date of determination: _____
Describe your professional qualifications and experience making employee/IC determinations: _____

8. **Conduct an analysis** of worker status by application of criteria set forth in chapter 4 of IRS Publication 963 and **attach a copy** of the analysis and reasoned final determination with the following specific analysis/determination sections. Each section of analysis must provide sufficient detail regarding the actual facts and circumstances of the IC in the specific position that another qualified analyst reviewing the report could come to the same determination.

- a. Identify and analyze any Montana education statutes or administrative rules, and/or employer policies that:
- create or authorize the creation of the position filled by the IC;
 - describe the duties and/or authorities of the position;
 - describe the supervisory chain applicable to the position, rights of tenure, and limitations on or requirements for dismissal of an individual in the position; and/or
 - describe education/training, licensure, and/or certification requirements applicable to an individual in the position.
- b. Restate each IRS criterion, including each subsection of each criterion, identified under the headings of Behavioral Control, Financial Control, and Relationship of the Parties in IRS Publication 963 and provide a detailed analysis of the application of each criterion/subsection to the facts and circumstances of the worker's service in the position at issue. For each criterion/subsection, provide a reasoned analysis whether and how the criterion weighs in favor of IC status.
- c. After completing the reasoned analysis under each criterion, provide a reasoned determination describing whether and how the analysis of all criteria weigh in favor of IC status

By my signature below I certify, under penalty of perjury, that I am qualified by training and/or professional experience to determine the status of a worker as either a common law employee or an independent contractor by application of the IRS's common-law criteria/factors.

I certify that I have made diligent inquiry of the facts and circumstances of the specific worker (IC) working in the specific position of the specific TRS employer, as identified in this form, and that the attached analysis and determination were made by me, independently, by application of the IRS criteria/factors to those facts and circumstances.

I certify that I made my determination without undue consideration for the preferences of the employer and/or worker and that I am willing to testify in an adjudicative proceeding regarding my determination.

Signature of Qualified Analyst

Date of Determination