



# **SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO**

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## **MEMBERSHIP DETERMINATION**

SERS has the authority to make membership determinations under Chapter 3309 of the Ohio Revised Code.

Generally, if an individual meets the definition of “employee” as set forth in R.C. 3309.01(B), that individual must contribute to SERS. Paragraphs (B)(1), (B)(2) and (B)(3) of section 3309.01 of the Revised Code set forth three separate definitions for “employee.”

Paragraph (B)(1) defines employee as “[a]ny person employed by a public employer” in a non-teaching position.

- SERS interprets this definition to refer to a common law employee-employer relationship. This definition applies when a school contracts directly with an individual for the individual’s services.
- Classifying an individual hired to perform services as an “independent contractor” does not necessarily relieve the obligation of SERS membership if the actual status of the worker is that of an employee.
- Employers should consult with their legal counsel when deciding if an individual working for the school is properly classified as an independent contractor.

Paragraph (B)(2) defines a person as an employee for purposes of SERS “if the person performs a service common to the normal daily operation of a school even though the person is employed and paid by one who has contracted with an employer to perform the service[.]”

“Common to the normal daily operation” has three separate definitions:

- (1) Any service required to be provided by an educational unit or the provision of which is governed by law, statute, or rule; or
- (2) Any service necessary on a regular continuous basis to the efficient operation of an educational unit; or
- (3) Any service which, through custom and usage, has become a service commonly provided or procured by an educational unit on a regular continuous basis.” Ohio Adm. Code 3309-1-11(D)

This definition applies when a school contracts with a contractor for the provision of services by employees of the contractor.

It is important to understand the different purposes of (B)(1) and (B)(2): (B)(2) sets forth a statutory definition of employee while (B)(1) refers to a common law employee.

The third definition of employee refers to any person employed in a non-faculty position in a school, college or other institution wholly controlled and managed, and wholly or partly supported by the state or any political subdivision thereof.

## **DETERMINATION PROCESS**

To begin the Determination Process, please complete the applicable sections of this form and return it to SERS along with a copy of the contract/service agreement. The completed form and agreement can be scanned and emailed to [employerservices@ohsers.org](mailto:employerservices@ohsers.org) or faxed to (614) 340-1195.

**SECTION 1: To be completed when the employer enters into an agreement for services with an individual service provider (the worker).**

The purpose of this section is to gather a complete description of the work relationship between the employer and the worker so that an accurate decision can be made as to the worker's status as an employee or independent contractor.

Employer Name: \_\_\_\_\_ Employer Number: \_\_\_\_\_

Employer Representative's Name \_\_\_\_\_ Title: \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_

Service Provider Name: \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_

**Attach a copy of Contract/Service Agreement.**

Provide a detailed description of the services to be provided. Attach job description if applicable.

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The following questions are intended to gather a comprehensive picture of the relationship and are based upon the twenty factor test developed by the IRS. In addition to seeking information relevant to how integrated the worker's services are to the employer's business operations and the continuity of the relationship, the remaining eighteen factors are posed as questions.

1. During the current or previous school year, has the employer previously obtained these services?  
 Yes  No If yes, please describe the frequency and duration of the services, the number of individuals who provided the services, and whether they were considered employees or independent contractors.

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2. Has the employer previously obtained services from the worker?  Yes  No If yes, state the nature of the services, the frequency and duration of the services, and whether the worker was considered an employee or independent contractor.

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3. Does the employer obtain from existing employees services similar to those to be provided under the present agreement for services?  Yes  No. If yes, please describe.

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4. Will/Does the worker's job involve interaction with school staff?  Yes  No. If yes, please describe.

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5. Will/Does the worker's job involve interaction with students?  Yes  No. If yes, please describe.

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6. Will/Does the worker have a school phone number and or email address?  Yes  No

7. Is the worker included in the school directory?  Yes  No

8. Must the worker take instructions regarding when, where, or how work is to be done?  Yes  No

9. Does the worker receive training from the employer?  Yes  No

10. Must the worker personally perform the contracted services?  Yes  No

11. Will the worker have assistants and or substitutes to assist the worker in completing the services stated in the contract?  Yes  No If yes, who will hire, supervise, and pay these individuals?

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12. Is the worker required to work for a set amount of time and /or a set schedule?  Yes  No

13. What will the worker's schedule be? \_\_\_\_\_

14. Does the employer require the worker's services full time?  Yes  No

15. Is the work performed on the employer's premises or at specific places set by the employer?  
 Yes  No
16. Does the employer determine the sequence the worker must follow in performance of services?  
 Yes  No
17. Must the worker report to the employer regarding his/her work?  Yes  No If yes, how often and in what format?

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18. What is the method of payment?  Hourly  Weekly  Monthly  Other: \_\_\_\_\_
19. Are the worker's business and /or travel expenses reimbursed?  Yes  No
20. Does the employer supply the individual with needed tools or materials?  Yes  No
21. Has the worker made a significant investment in equipment or facilities used to perform services?  
 Yes  No
22. Is the worker in a position to realize a profit based on his/her work?  Yes  No
23. Does the worker perform services exclusively for one employer at a time  Yes  No, or for several employers at the same time?  Yes  No
24. Does the worker make his/her services available to the general public?  Yes  No
25. Does the employer have the right to discharge the worker for reasons other than non-performance of the contract?  Yes  No
26. May the worker terminate the employment relationship without incurring liability for any unfinished work?  
 Yes  No

**SECTION 2: To be completed when the educational unit (employer) hires a contractor (a company) for the provision of services by employees of the contractor.**

Employer Name: \_\_\_\_\_ Employer Number: \_\_\_\_\_

Employer Representative's Name \_\_\_\_\_ Title: \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_

**Attach a copy of Contract/Service Agreement.**

Provide a detailed description of the services to be provided. Attach job descriptions if applicable.

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The purpose of the questions under this section is to determine if workers, whose service a school obtains through a contract with a company, are performing a service common to the normal daily operation of a school, and therefore are employees of the school as defined in R.C. 3309.01(B)(2).

1. Are any of the contracted services being provided required or governed by law, statute, or rule?  
 Yes  No If yes, please explain:

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2. Describe the frequency and period of time over which the services will be provided. \_\_\_\_\_

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3. Were any of the services under the contract previously provided by employees of the educational unit?  
 Yes  No

4. During the current or previous school year, has the employer previously obtained these services?  
 Yes  No. If yes, please indicate whether the school contracted with a company to provide the services or employed the worker(s) directly.

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5. Does the employer obtain from existing employees services similar to those to be provided under the present agreement for services?  Yes  No. If yes, please describe.

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