

Board Policy

Determination of Employment Status: Employee or Independent Contractor

Regulations promulgated by the Office of the State Comptroller provide guidance to Eastern Suffolk BOCES to help determine whether an individual is an employee and, therefore, eligible for membership in the New York State and Local Retirement System (NYSLRS) and for service credit, or an independent contractor, who is not eligible for membership.

A certification of the determination that an individual is an employee will now be required when ESBOCES initially reports to the NYSLRS certain covered professionals - those individuals providing services as attorneys, physicians, engineers, architects, accountants, or auditors.

"Employee" shall mean an individual performing services for ESBOCES for which ESBOCES has the right to control the means and methods of what work will be done and how the work will be done.

"Independent contractor" shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of ESBOCES as to the means and methods of accomplishing the result.

The following guidelines shall be used in making the determination as to whether an individual is an employee or an independent contractor.

	Employee	Independent Contractor
1. Does ESBOCES have the right to control, supervise, or direct the individual performing the services, not only as to result but as to how assigned tasks are to be performed?	YES	NO
2. Does the individual report to a certain person or department at the beginning or during each work day?	YES	NO
3. Does the individual receive instructions as to what work to perform each day?	YES	NO
4. Are the individual's decisions subject to review by ESBOCES?	YES	NO
5. Does ESBOCES set hours to be worked?	YES	NO
6. Does the individual work at established and fixed hours?	YES	NO
7. Does the employer maintain time records for the individual?	YES	NO
8. Has ESBOCES established a formal job description for the position?	YES	NO
9. Has the ESBOCES Board formally created the position with the approval of the local Civil Service Commission where necessary?	YES	NO
10. Does ESBOCES prepare performance evaluations for the individual?	YES	NO
11. Does ESBOCES have the right to require the individual to be trained?	YES	NO
12. Does ESBOCES provide the individual with permanent	YES	NO

	Employee	Independent Contractor
workspace and facilities (e.g., office, furniture, utilities)?		
13. Does ESBOCES provide the individual with equipment and support services (e.g., computer, telephone, supplies, clerical assistance, etc.)?	YES	NO
14. Is the individual covered by a contract negotiated between a union and ESBOCES?	YES	NO
15. Does the individual have a personal employment contract with the employer?	NO	YES
16. Does ESBOCES pay the individual salary or wages through the ESBOCES payroll system?	YES	NO
17. Does ESBOCES pay the individual for the performance of services through the submission of a voucher?	NO	YES
18. Are tax withholding and employee benefit deductions made from the individual's paychecks?	YES	NO
19. Does the individual receive any fringe benefits (e.g., health insurance, sick time, or vacation time)?	YES	NO
20. Is the individual authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for ESBOCES?	NO	YES
21. Is the individual concurrently performing substantially the same services for other agencies?	NO	YES
22. Is the individual also employed or associated with another entity that provides services to the employer by contract, retainer, or other agreement?	NO	YES
23. Does the individual provide similar services to the public?	NO	YES
24. Does ESBOCES hire, supervise, and pay assistants to the individual?	YES	NO
25. Can the individual realize a profit or loss as a result of his/her services?	NO	YES

A high number of "yes" responses most likely indicates the presence of an employment relationship. A high number of "no" responses may or may not indicate an independent contractor relationship. It is best for ESBOCES to err on the side of caution and to pursue an IRS ruling when in doubt. The important thing to remember when evaluating the status is who has the right to control the work as to when and how it is completed.

If it is determined that the individual is an employee, appropriate Human Resources paperwork must be completed.

If it is determined that the individual is a consultant, appropriate contracts must be executed and approved by the Board.

Employees to be Reported to NYSLRS

All persons employed by ESBOCES shall be included in the reporting requirements set forth in the Regulations promulgated by the Office of the State Comptroller. ESBOCES shall provide the information deemed necessary by the retirement system for all employees except those who

actively participate in another public retirement system or program. In the case of employees who are in the process of being registered to membership, all service, salary, and deduction data and mandatory contributions shall be accumulated by ESBOCES, and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned.

An individual serving ESBOCES as an independent contractor or consultant is not an employee and should not be reported to the retirement system as an active employee.

ESBOCES has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination, ESBOCES must consider the factors enumerated in State Regulations.

ESBOCES shall also complete, as necessary, a Certification Form for Individuals Engaged in Certain Professions (Form RS2414), as promulgated by the Office of the New York State Comptroller. As noted on the Certification Form instructions, when making a determination as to an individual's status as an employee or independent contractor, no single factor should be considered to be determinative and/or conclusive of the issue. All relevant factors should be considered in making an assessment of an individual's status when engaged to perform services.

Written Explanation by ESBOCES: Certain Professions

In the case of an individual whose service has been engaged by ESBOCES in the capacity of attorney, physician, engineer, architect, accountant, or auditor and ESBOCES has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, ESBOCES shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the Chief Operating Officer of ESBOCES, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant.

Such certification shall be submitted to the retirement system at the time the individual is registered for membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by ESBOCES to the retirement system. ESBOCES shall submit copies of documentation pertaining to the appointment of the individual as an employee, including a copy of the minutes of the Board meeting where such individual was appointed an employee by the Board, and the decision to report the individual to the retirement system, as well as the acceptance of the appointment by the local civil service commission, where necessary.

Reports Regarding Attorneys

In accordance with NYS Education Law §2053, ESBOCES shall, on or before the forty-fifth (45th) day after the commencement of its fiscal year, file with the State Education Department, the State Comptroller, and the Attorney General a report specifying the following:

1. all attorneys who provide legal services to ESBOCES;
2. whether ESBOCES hired such attorneys as employees; and
3. all remuneration and compensation paid for legal services.

References:

- Retirement and Social Security Law Sections 11 and 34
- 2 New York Code of Rules and Regulations (NYCRR) Sections 315.2 and 315.3

First Adopted: 12/10/2025