



Illinois Municipal Retirement Fund

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Member Services Representatives 1-800-ASK-IMRF

www.imrf.org

GENERAL MEMORANDUM

Number: 604

Date: October 15, 2010

To: All Authorized Agents

Subject: Incorrectly classifying employees as Independent Contractors

Executive Summary

To ensure that IMRF employers are correctly implementing IMRF statutes, policies, and procedures, IMRF conducts Employer Audits. One of the frequent exceptions the auditors are finding is employees incorrectly classified as independent contractors.

Employers attempting to avoid IMRF contributions by incorrectly classifying employees as independent contractors are assessed retroactive contributions on the compensation paid to the incorrectly classified employee. It is the actual facts of the relationship that control the worker's status, not the name given or the provisions of a written agreement.

Upon request, the IRS will verify a worker's status as an independent contractor. IMRF recommends that employers file IRS Form SS-8 for any worker classified as an independent contractor, who will spend a significant amount of time performing services for you. The IRS will then make an official determination regarding the position.

You can download IRS Form SS-8 at www.irs.gov or contact the IRS at 1-800-829-1040 for more information about filing this form or the determination process.

Dear Authorized Agent:

To ensure that IMRF employers are correctly implementing IMRF statutes, policies, and procedures, IMRF conducts Employer Audits.

During an Employer Audit, IMRF's internal auditors perform procedures designed to determine the employer's compliance with statutory reporting requirements relating to employee enrollment, earnings, and service. One of the frequent exceptions the auditors are finding is employees incorrectly classified as independent contractors.

- more -

October 13, 2010

Incorrectly classifying employees as Independent Contractors

Page 2 of 2

Independent contractors

Employers attempting to avoid IMRF contributions by incorrectly classifying employees as independent contractors are assessed retroactive contributions on the compensation paid to the incorrectly classified employee. We caution you to examine carefully the classification of anyone who works your IMRF hourly standard (600 or 1000 hours annually) and is not treated as an IMRF participating employee.

An employer cannot simply designate as an independent contractor a person performing services for the employer. Even though the worker agrees to be called an independent contractor and the employer and worker enter into a contract, unless a very specific set of criteria are satisfied, the worker remains an employee. It is the actual facts of the relationship that control the worker's status, not the name given or the provisions of a written agreement.

Guidelines

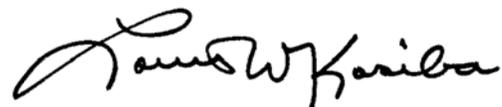
A person is most likely an employee and not an independent contractor if:

- The person is under the employer's work direction and control as to the time and manner of work performance;
- The person does not make his or her services available to other entities;
- The person is performing services that are a key aspect of the employer's business;
- The person cannot realize a loss because of the relationship with the employer;
- The person does not hire his or her own assistants or have unreimbursed business expenses.

Upon request, the IRS will verify a worker's status as an independent contractor. IMRF recommends that employers file IRS Form SS-8 for any worker classified as an independent contractor, who will spend a significant amount of time performing services for you. The IRS will then make an official determination regarding the position.

You can download IRS Form SS-8 at www.irs.gov or contact the IRS at 1-800-829-1040 for more information about filing this form or the determination process.

Sincerely,



Louis W. Kosiba
Executive Director