

COMPENSATION AND BENEFITS

The Peru Central School District Board of Education believes that the district's employees should receive fair compensation and benefits for the work they provide in serving the children of our community. To this end, the Superintendent of Schools shall be responsible for establishing and administering the compensation and benefits provided to the district's employees, consistent with collective bargaining agreements. The Board and the school district will comply with all applicable federal and state laws that require minimum compensation, overtime and benefits be provided to certain employees.

Determination of Employment Status

Before enrolling an individual in the district's compensation and benefits program, the district will determine the individual's employment status. In accordance with regulations issued by the State Comptroller and as set forth by the Internal Revenue Service, the School Business Administrator will determine if the person is an employee and thus entitled to benefits. If the individual is not an employee based on the specified criteria, they will not be enrolled in any of the benefit programs offered by the district or the State. When the district hires an attorney, physician, engineer, architect, accountant or auditor as *an employee and not an independent contractor*, the Board of Education President must certify to the applicable New York State Retirement System the factors supporting that determination using the form prescribed by the State Comptroller.

The Board of Education President or designee shall be responsible for reporting to the appropriate retirement system those individuals eligible for membership. This reporting shall take place at the time of an individual's employment, and at the intervals required by the appropriate retirement system.

Employees Covered by Collectively Negotiated Agreements

The compensation and benefits (except for State Retirement System benefits) for employees who are represented by recognized or certified employee organizations are established by collectively negotiated agreements between the employee organizations and the district. The district will negotiate in good faith over these issues, as required by law, and will fully comply with the requirements of the Taylor Law and the applicable collectively negotiated agreements.

The Board reserves its right to approve all additional funding required by the provisions of a tentative collectively negotiated agreement, in addition to any right of ratification that is secured by the district's negotiation representative(s).

Employees Not Covered by Collectively Negotiated Agreements

The compensation and benefits for employees who are not represented by recognized or certified employee organizations shall be determined by the Board of Education upon the recommendation of the Superintendent.

When making a determination as to whether an individual should be classified as an employee or an independent contractor for purposes of receiving district compensation and benefits, and specifically for reporting to the New York State Employees Retirement System, the district shall utilize the factors listed in the Comptroller's Regulations §315.3. Under § 315.2 of those regulations, the following definitions apply:

- a. **Employee** means an individual performing services for the district for which the district has the right to control the means and methods of work will be done and how the work will be done.
- b. **Independent Contractor** means a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the district as to the means and methods of accomplishing the result.

I. Employees

The following factors shall support a conclusion that an individual is an employee rather than an independent contractor:

- a. The district controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;
- b. The individual reports to a certain person or department at the beginning or during each work day;
- c. The individual received instructions as to what work to perform each day;
- d. The individual's decisions are subject to review by the district;
- e. The district set hours to be worked;
- f. The individual works at established and fixed hours;
- g. The district maintains time records for the individuals;
- h. The district has established a formal job description;
- i. The Board of Education formally created the position with the approval of the local civil service commission where necessary;
- j. The district prepares performance evaluations;
- k. The district requires that the individual attend training;
- l. The district provides permanent workspace and facilities (including, but not limited to, office, furniture and/or utilities);
- m. The district provides the individual with equipment and support services (including, but not limited to, computer telephone, supplies and/or clerical assistance);
- n. The individual is covered by a contract negotiated between a collective bargaining unit and the district;
- o. The individual is paid salary or wages through the district's payroll system;
- p. Tax withholding and employee benefit deductions are made from the individual's paycheck; and
- q. The individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).

II. Independent Contractor

The following factors shall support a conclusion that an individual is an independent contractor rather than an employee:

- a. The individual has a personal employment contract with the district;
- b. The district pay the individual for the performance of services through the submission of a voucher;
- c. The individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the district;
- d. The individual provides similar services to the public;
- e. The individual is concurrently performing substantially the same services for other public employers; and

- f. The individual is also employed or associated with another entity that provides services to the district by contract, retainer or other agreement.

When an individual is providing services to the district in the capacity of attorney, physician, engineer, architect, accountant or auditor, and is also a partner, associate (including an attorney in an "of counsel" relationship), or employee of another organization or entity that has a contract, retainer or other agreement to provide professional services to the district, it shall be presumed that the individual is an independent contractor and not an employee of the district.

Cross-ref: 6741, Contracting for Professional Services
6800, Payroll Procedures
9420, Recruiting and Hiring

Ref: Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), 42 USC §§ 300bb-1 *et seq.* (federal law that required the continuation of health insurance benefits under certain circumstances).
Fair Labor Standards Act (FLSA), 29 USC §§ 200 *et seq.* (federal law that required a minimum wage and overtime for non-exempt employees)
Family and Medical Leave Act of 1993 (FMLA), 29 USC §§ 2610 *et seq.* (federal law that requires an unpaid leave of absence for certain family and medical situations)
Civil Service Law §§ 200 *et seq.* ("Taylor Law," required school district to negotiate with unions)
Education Law § 3005-b (required a minimum sick leave allotment and accumulation for teachers)
Local Finance Law § 2.00(5) (e) (designates Board of Education President as Chief Fiscal Officer)
2 NYCRR Part 315.2 and 315.3 (criteria for determining employment status)

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