

Labor Employer Reporting Instructions
Part IV – Particular Types of Compensation Payments
Chapter 11: Contract Services

Coverage under the RRA and RUIA

If a labor organization contracts work with non-railroad employees, this may allow the non-railroad employees to be covered under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) as though they were a covered employee. For this to occur, the non-railroad employees would have to be determined to be in an employment relationship with a covered employer.

The Railroad Retirement Board uses definitions of "employee" and "service" in the RRA and RUIA as well as principles of common law to determine whether a business relationship is that of an employer-employee or that of an independent contractor.

Basis of Coverage

The primary basis of such coverage is Sections 1(b) of the RRA and 1(b) and 1(e) of the RUIA which define an employee as an individual in the service of an employer. Section 1(d)(1) of the RRA further characterizes "in the service of an employer" as either:

- Subject to the employer's continuing authority to direct the work; or
- Rendering professional or technical services and is integrated into the employers' staff; or
- Rendering, on the property of the employer's operations, personal services which are integrated into the employer's operations.

Subject to the Employer's Authority

A person is an employee if the person for whom he or she works has the right to direct and control the way he or she works both as to the final result and as to the details of when, where and how the work is to be done. The employer need not actually exercise control. It is sufficient that the employer has the right to do so.

Rendering Technical Services & Integrated into Staff

Some services, such as bookkeeping, which are not necessarily associated solely with the railroad industry, may be performed by individuals integrated into the overall railroad staff or by individuals in a distinctly independent trade or business.

Rendering Integrated Services on Employer's Property

One indication of employee status would be performance of a service that by its nature is so integrated into the railroad's operation that it must be performed under the railroad's control. Therefore, if an individual, nominally on the payroll of a hiring agency, performed service for a railroad which is clearly an integral part of the railroad's operation, such as locomotive engineer,

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signalman, or maintenance of way worker, it would appear that an individual would be an employee under the RRA and RUIA.

Employee Status Criteria

A person may be considered an employee if one or more of the following apply:

- Performance of work on the employer's premise;
- Execution of a contract for continuing services over a long or indefinite period;
- Devotion of substantially all of a person's working time to such services;
- Performance of duties similar to those previously performed as an employee;
- Periodic payment of regular remuneration rather than payment for a specific result or product.

Independent Contractor Status Criteria

A person may be considered an independent contractor if one or more of the following apply:

- An independent office or the performance of the work in places not associated with the employer's premises;
- Performance of similar services for persons other than the employer;
- Complete freedom as to the amount of time to be expended in rendering a particular service;
- Agreements for the performance of services for a limited time period on a particular project;
- Payments for a particular result accomplished rather than regular remuneration on a time basis.

Who Makes the Decision

The three-member Board, based upon the recommendation of the General Counsel is responsible for making determinations of employee status. While employers may make the initial employment status decision, the decision may later be subject to investigation by the Division of Audit and Compliance in the Bureau of Fiscal Operations. Their findings are then forwarded to the General Counsel who will make a recommendation to the Board.