



State of Arizona Accounting Manual

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Section 51 Temporary Workers

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INTRODUCTION

The principal concern of this policy statement is the relationship between the State and temporary workers and the avoidance of an "adverse determination." A "temporary worker," frequently referred to as a "temp," for purposes of this policy is an individual employed by a company, generally known as a "temporary service business," "temporary staffing company," or a "temp service" that sells the services of the temporary worker to a "client" on a fee basis. In certain contexts, the temporary service business may also be referred to as the "service provider" and the client as the "service consumer."

It is to be noted that different terms are used in different contexts by different organizations to identify a temporary worker, the temporary service business, and the client. The IRS, for example, uses the term "leased employee" rather than temporary worker and one sees the use of "leased staff" or other designations; a temporary service business may be referred to as a "temporary staffing service," "staff leasing company," "staffing firm," or "staffing business"; "customer" can be used rather than client or consumer.

There are many different categories of temporary service companies providing an extensive array of services. Examples of temporary service companies (constituting neither favor nor disfavor of those mentioned) and the types of services they provide (merely a representative, rather than an extensive listing) include Kelly Services (for administrative and secretarial services), Robert Half (for bookkeeping and accounting services), or GuideSoft/Knowledge Services (or other statewide service providers).

An adverse determination is a decision by a competent governmental authority that an individual who is a temporary worker is effectively employed by the client, rather than by the temporary service company, or that the temporary worker is, in effect, co-employed jointly by both the client and the temporary service company. An adverse determination results in severe negative consequences involving employment taxes, benefits and other matters for the client.

Temporary workers should be engaged only to provide services on a relatively short-term basis. The temporary service business establishes the terms and conditions of the employment of the temporary worker, including, but not limited to, pay and benefits, and deals with employment taxes and reporting to taxing authorities related to the temporary workers it supplies.

A temporary worker is not a State employee and the arrangement between the State and the temporary service business that employs him should be temporary in nature.

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Problems involving the proper characterization of temporary workers are more likely to arise when such arrangements extend over significant periods of time or involve more than the completion of a specific project.

What separates a temporary worker from other contractors is the expected duration of his engagement with the State. While certain projects on which other contractors may work may span several years until completion, a temporary worker's assignment is understood at the outset to be expected by all involved to be relatively brief and certainly less than two (2) years.

Temporary workers do not, in general, have most or even many of the characteristics of an independent contractor as described in SAAM 9050; in fact, as individuals, given the environment in which they work and the level of direction and control the client exercises over them, their jobs, and their day-to-day work activities, they seem more like employees of the client.

The greatest risk related to a temporary worker is that the duration of his engagement, originally planned as being relatively brief, becomes intentionally or unintentionally extended, without a significant break in service, beyond its initial term. Over time, the temporary worker is so integrated into an organization's operations that he becomes indistinguishable from an employee. Once that happens, an adverse determination grows increasingly likely. To mitigate the risk of an adverse determination, an organization should take appropriate actions to limit the duration of temporary engagements and to reduce a temporary worker's integration into the organization's operations and what might be called its social environment.

It may often be in the best interests of the State to outsource entire operations rather than to attempt to have services that are not temporary in nature and are or have been traditionally performed by State employees carried out, instead, by temporary or contract workers. Such an approach mitigates and possibly eliminates the risk of an adverse determination. Moreover, given competitive bidding and entity specialization, outsourcing entire operations may produce better and more economical results.

While it could be suggested that the fairly frequent rotation of personnel advocated by this section of SAAM introduces certain risks or costs related to the possible loss of an individual's experience with a process or familiarity with others in a team or department, it need be borne in mind that such risks and costs always exist—people do resign and retire, sometimes without very much notice. Conversely, not rotating temporary workers on a frequent basis increases potential risks and costs that could arise from litigation related to the employment status of the worker.

To better acquaint oneself with some of the issues that affect temporary workers and other contract workers, one should read SAAM Sections 9050, *Employee vs. Independent Contractor*, and 9052, *Contractors: Considerations and Concerns*, which this section of SAAM complements, but does not replace. To gain the best understanding of this subject matter, It might be of value to read these related SAAM sections in numerical order.

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Nothing in this policy creates an employment relationship between the State and an individual employed by a temporary service business or establishes a co-employer relationship with a temporary service business.

POLICIES

1. Agencies subject to the Arizona Procurement Code must use the appropriate ADOA State Procurement Office (SPO) statewide contract to purchase temporary worker services, unless a state contract waiver for off-contract purchase has been approved in accordance with SPO Standard Procedure No. SP 040.
2. State employees involved in contracting for or otherwise engaging with temporary workers should familiarize themselves with the policy publications dealing with temporary workers and/or independent contractors issued by the GAO and/or other governmental authorities.
3. Agencies may use the services of a temporary service business to fill short-term assignments; appropriate use of temporary workers may include, but might not be limited to:
 - 3.1. Augmenting staff during a period of persistent vacancies caused by labor shortages.
 - 3.2. Performing work normally done by a State employee during the latter's leave of absence (e.g., FMLA leave, military leave, industrial leave, etc.).
 - 3.3. Performing work during peak workload periods, either anticipated (e.g., seasonal requirements) or unanticipated (e.g., a new program, expansion of an existing program, etc.).
 - 3.4. Assisting in the identification and recruitment of qualified candidates for potential employment consistent with any requirements of a contract between the temporary service business and the State or its agencies.
4. Temporary workers are not State employees. The State disavows any employment relationship with any worker provided by a temporary service business or under the provisions of a temporary worker contract.
5. Invoices to the State from a temporary worker or a temporary service business that are calculated on hours of service provided:
 - 5.1. Must be based on actual hours of labor and/services provided.
 - 5.2. Must not include any payments relating to sick time, personal time off, holiday time, vacation time, overtime or any other calculation not related directly to actual hours or labor and/or services provided to the State.

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5.2.1. This does not prohibit premium payments related to expedited or emergency services.

6. Temporary workers must not:

- 6.1. Be eligible for Employee Recognition Awards, spot awards, merit incentives, etc.
- 6.2. Be allowed to act in the final capacity of approving disbursements or be granted access to State automated systems that involves the final approval of disbursements or transfers. (See SAAM 0540.)
- 6.3. Be directly reimbursed for expenses they may incur on behalf of the State. Requests for reimbursement should be made by temporary workers to their employer, i.e., the temporary service business, and the reimbursement itself should be made by the temporary service business to its employees, the temporary workers. The State is in privity of contract with the temporary service business, not with the temporary workers themselves.
- 6.4. Be provided training beyond that necessary to accomplish those tasks contemplated by the contract between the State and the temporary service business. For example, it might be appropriate to train a temporary worker to operate a particular accounting system, but not to teach the temporary worker subjects such as generally accepted accounting principles, business management or computer programming.
- 6.5. Participate in certain events and meetings, designed specifically for State employees, that do not directly involve the services performed by the temporary workers (e.g., employee recognition events, retirement seminars, etc.).
- 6.6. Engage in any activity that would lead the temporary worker or any other individual or entity to conclude that the temporary worker is a State employee.
- 6.7. Originate or approve on behalf of any State agency any requisitions to engage or contract with any temporary worker and/or temporary service business.
- 6.8. Approve on behalf of any State agency the time records or invoices related to any temporary worker and/or temporary service business.

7. Temporary workers should not:

7.1. Manage or supervise State employees.

- 7.1.1. While there may be circumstances under which it is in the best interest of the State to allow a temporary worker to provide some degree of oversight of State employees, these situations are rarities and should be of relatively brief duration and limited scope; they should also involve discussions with an agency's human resources personnel about staffing such positions with State employees.

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- 7.1.2. The circumstances under which a temporary worker might provide oversight of State employees would be those in which a temporary worker briefly fills the role of a manager or supervisor while an active search—an active search includes evidence of intent and activities such as advertising the position, collecting resumes, conducting interviews and evaluations, etc.—to fill the position under consideration with a State employee is in progress.
 - 8. Except as otherwise provided, a temporary worker should not be engaged in the same role for more than six (6) months. This is particularly true in those situations where the temporary worker is performing work that typically is, has been, should be or should have been performed by a State employee; these situations specifically include engagements in which the work performed is integral to an agency's operations.
 - 8.1. Agency management must review the status of the engagements of all temporary workers who have been engaged six or more (6) months. For those agencies or divisions that have engaged multiple temporary workers, it may be practical to schedule monthly or quarterly reviews of those arrangements that have reached the six- (6-) month mark since the last regularly scheduled review. The purpose of this review is to determine whether it will be in the best interest of the State to continue an individual worker's engagement. Among the possible outcomes of such a review, which should be documented and retained by agency management, are:
 - 8.1.1. It is necessary to retain an individual temporary worker to perform essentially the same services as the temporary worker has been providing for another period, up to another six (6) months.
 - 8.1.1.1. The documentation related to each decision to continue a temporary worker's engagement to provide essentially the same services for a period of more than six (6) months should be retained by agency management for a period consistent with the retention schedule for accounting records prescribed by LAPR.
 - 8.1.1.2. Though reviews must be conducted every six (6) months of an individual temporary worker's engagement, the engagement with an individual temporary worker to perform essentially the same services must not extend beyond two (2) years, after which the relationship with the individual must be significantly changed or entirely discontinued.
 - 8.1.2. For any number of reasons, the individual temporary worker will be retained, but assigned to perform different duties for the next six (6) months of the engagement. This is generally best accomplished by transferring the temporary worker to another department or division or even another agency.
 - 8.1.3. While a temporary worker may still be needed to fulfill certain agency functions, the individual performing the services will be changed. This places the emphasis on the task to be performed, rather than on the individual performing the task.

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- 8.1.4. The nature of the work performed by the temporary worker is of a permanent nature and the execution of the duties under consideration should be transferred to a State employee.
- 8.1.5. The engagement of a particular temporary worker will be interrupted for a significant period; in this context, a significant period means a calendar month or more.
- 8.1.6. The engagement of a particular temporary worker will be permanently severed.
- 8.2. Any changes to a temporary worker's duties should be communicated in writing to the applicable temporary service business and the agency's chief procurement officer or appropriate delegatee for exempt purchasing. Agency management should determine, in working with the agency's chief procurement officer or delegate, whether a new purchase order and billing rate is warranted. Any changes in duties or assignment should be confirmed with the temporary worker in writing.
9. In considering the likelihood of an adverse determination, management should take into account the possible negative effects this might have on other agencies; it is doubtful that an investigation resulting in adverse determination against one agency would not be expanded to other agencies or programs.
10. When a temporary worker is assigned to perform work that is substantially equal to that which is or would be provided by a State employee, whether the contract billing rate for the temporary contract worker is appropriate is a matter that compels management attention; legal advice on the Equal Pay Act should be sought if circumstances warrant.
11. Whatever determination may be made with respect to workers—engaged as temporary workers or hired as employees of the State—appropriate funding must be secured per agency protocol.
12. Agency management must ensure that appropriate pre-placement screenings are conducted by the temporary service business in accordance with the contract to fill position-specific requirements.
13. Agency management must ensure that internal policies, procedures and practices are in place to address appropriately limited access to and use of the following by temporary workers:
 - 13.1. Facilities, keys to facilities, and badge access (a badge issued to a temporary worker shall identify the temporary worker as a "contractor" or "temporary" and should be readily distinguishable from a badge issued to an employee).
 - 13.2. Equipment, as required to allow the temporary worker to fulfill the terms of the contract with the temporary service business.

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- 13.3. Computer and software systems necessary to fulfill the terms of the temporary worker contract.
- 13.4. Cash and/or checks and/or warrant stock.
- 13.5. Confidential information held by the agency, including, but not limited to:
 - 13.5.1. Personally identifiable information.
 - 13.5.2. Any information designated as confidential by Federal or State law.
 - 13.5.3. Employee information, including address, social security number, bank account information.
 - 13.5.4. Health related information covered by the Health Insurance Portability and Accountability Act (HIPAA).
- 13.6. Public records.
14. At times appropriate to the circumstances, agency management must:
 - 14.1. Coordinate and validate the work performed and the hours worked by temporary workers and ensure that such work falls strictly within the terms of the contract with the temporary service business.
 - 14.2. Review and approve temporary service business invoices to the State prior to having the payment processed. This review should include verifying the agreed upon rate, the number of hours worked, and any claim for reimbursement of expenses incurred by temporary contract workers on behalf of the State of Arizona.
 - 14.3. Monitor, as circumstances may dictate, the termination of individual temporary workers or a temporary service contract as a whole.
 - 14.4. Identify any temporary workers who are Arizona State Retirement System (ASRS), Public Safety Personnel Retirement System (PSPRS), Corrections Officer Retirement Plan (CORP), or Elected Officials Retirement Plan (EORP) retirees and ensure compliance with the requirements of the applicable Alternative Contribute Rate (ACR) contributions.
 - 14.4.1. Additional information about the ACR can be found in SAAM 5545.
 - 14.4.2. The agency's accounting and/or accounts payable unit is to be notified if any ACR contributions may become due with respect to temporary contract workers or independent contractors.

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- 14.4.2.1. If the ACR applies to any temporary worker, calculate the amount of the ACR due and report it to the GAO using the appropriate ACR reporting template and remit to the GAO any ACR due on a timely basis.
15. Agency management is responsible for ensuring to the extent practicable that any temporary service business with which it does business:
 - 15.1. Adheres, as applicable, in all respects to the State Procurement Code and the temporary service business' contract.
 - 15.2. In accordance with the relevant temporary worker contract:
 - 15.2.1. Sources candidates and conducts interviews and pre-screening, reference checks, competency and/or experience verification, and required background checks prior to the beginning date of the engagement.
 - 15.2.2. If applicable to the engagement, conducts:
 - 15.2.2.1. Criminal records checks.
 - 15.2.2.2. Drug and/or alcohol testing.
 - 15.3. Generates invoices to the agency based upon reported and approved hours and/or reimbursable expenses incurred by temporary workers on behalf of the State.
 - 15.4. Pays its employees, the temporary workers, for agreed upon duties and hours worked and reimburses them for expenses they incurred on behalf of the State.
 - 15.5. Withholds, reports and remits all employment taxes that become due with respect to the temporary workers providing temporary services to the State.
 16. This policy applies to all current and future temporary worker engagements.