



## Public employers: New annual report due to OPERS by January 31, 2014

January 17, 2014

By January 31, 2014, public employers reporting to Ohio Public Employees Retirement System (OPERS) are required to submit an annual report listing non-contributing service providers, including independent contractors or any other classification of a service provider other than “employee.” This obligation, as well as other employer requirements, is the result of a 2013 Ohio law (legislation).

The primary purpose of this legislation was to impose a statute of limitation upon an individual’s ability to request a determination from OPERS as to whether he/she should have been classified as a public employee and, consequently, be entitled to service credit for purposes of OPERS benefits. Previously, there was no limit to how much time an individual had to request such a determination from OPERS, which often resulted in a public employer facing unanticipated liability for many years of unpaid OPERS contributions.

The legislation also requires public employers to obtain, within 30 days of the date an individual begins performing service, a signed [Independent Contractor/Worker Acknowledgment form](#) from any individual who the employer does not classify as a public employee. However, public employers need not obtain this acknowledgment from individuals who: (a) began providing services on or before January 7, 2013, or (b) are employed by a “business entity” (meaning a company with five or more employees). The acknowledgment form provides notice to the individual that the employer does not consider him/her a public employee and that no contributions will be made to OPERS. Employers must retain a copy of the acknowledgment for at least five years and provide a copy to OPERS.

With regard to the business entity exclusion from the acknowledgment form requirement, the legislation states that contracts between a public employer and a business entity must include language that all individuals employed by the business entity, who provide services to the public employer, are not public employees for purposes of OPERS membership.

Because there are significant consequences for misclassifying an individual and failing to make otherwise required OPERS contributions, public employers should be careful about classifying someone as a non-OPERS contributing independent contractor. Presumably, OPERS will be auditing the annual reports against the contributing employee list to evaluate discrepancies.

# Authors

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