

## Role of the Employer of Record

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Virtually all participants identify the need for providers to deliver specific services based on Individual Support Plan (ISP) and budget. These providers will be hired as an employee, independent contractor or agency.

In some instances, the service code being used will dictate whether the provider will be hired as an employee, independent contractor or an agency. If a desired service code allows either an employee or an independent contractor, the employer must make a decision based upon [IRS guidelines](#), which are in summary:

EMPLOYEE (W-2)	INDEPENDENT CONTRACTOR (1099)
Is assigned tasks by the employer	Exercises independent judgment to determine work tasks
Receives work schedule and priorities from employer	Determines own work schedule and sets priorities
Does not need to provide their own specialized equipment	Does provide own equipment
Has taxes withheld from paycheck, they will receive a W-2 at the end of the year.	Does not have taxes withheld; FMS will issue a 1099 at end of year and provider will have tax liability on income
Social Security taxes are taken from paycheck	Does not pay into Social Security
Covered by unemployment and a workers' compensation policy	No coverage for unemployment or workers compensation.
No licensure, certification, or special training required	Professionally licensed or certified by occupation

### Employer of Record Identification and Documentation

If the provider is going to be an employee, it needs to be determined if there is someone who can serve as an Employer of Record (EOR). The EOR would designate the Financial Management Services (FMS) agency as their "agent". The FMS would therefore be responsible for paying payroll taxes, withholding taxes, and obtaining a worker's compensation policy for the employee.

An EOR cannot have a pre-existing Employer Identification Number (EIN) unless the existing EIN is inactive and will not be used for future business or PCA services. The EIN established with the FMS cannot be used with any other agency. For this reason, a participant who may need PCA services in the future may not want to serve as the EOR. If you act as a surrogate for PCA services, you can be the EOR provided you do not have an existing EIN. Any family member or friend of the participant may serve as EOR. If there is no one to serve as EOR, then the EOR

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Agency that the FMS contracts with should be used. There is a cost difference associated with using the EOR Agency, please refer to the FMS guidance.

EOR will have to fill out the following documents with the FMS:

- IRS Form SS-4: Application for Employer Identification Number
- IRS Form 2678: Employer Appointment of Agent
- MA DOR Form M-2848: Power of Attorney and Declaration of Representative
- MA Worker's Compensation Power of Attorney

### Employer Responsibilities

In summary, the EOR is responsible for:

- Recruiting, hiring, supervising, and terminating all providers.
- Establishing schedules, pay rates, and tasks to be completed by each provider.
- Complying with [Workers Bill of Rights Law](#).
- Reviewing and approving timesheets for each employee.
- Reviewing and submitting invoices for payment/reimbursement to the Support Broker. within 60 days of the service date, as needed.
- Communicating regularly with Support Broker and FMS.
- Asking for help or guidance, when needed.
- Understanding the FMS portal.

### Making the Hiring Decision

The decision to hire an employee or an independent contractor is made by the employer. The job offer is contingent upon meeting requirements in the provider registration process that include:

- Having passed all three background checks:
  - Massachusetts Criminal Offender Record Information (CORI)
  - Disabled Persons Protection Commission (DPPC) Abuser Registry Check
  - National Background Check (NBC)
- Meeting qualification credentials:
  - Must be at least 18 years old.
  - Must have a high school diploma, equivalent or relevant experience.
  - Must legally be authorized to work in the United States of America.
  - For professional services: must submit license or certification.

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## Identifying Job Duties and Developing a Job Description

The employer and participant need to develop job descriptions for each provider with clear job duties listed for each service code. The Support Broker can help with this but their role in this process is supportive.

Possible questions for employers to ask the participant when developing a job description include:

- What is your vision or goals?
- What support do you need/want to reach your vision and goals?
- What has/hasn't worked in the past?
- Who do you work best with and why?
- What tasks should be listed for the provider?
- Is there anything else that you want to include?

It is important to include specific details about what the provider will do, so that the provider, participant, and employer have agreed upon expectations of what supports will be provided.

## Setting a Job Schedule

The job description should include the specified schedule and be reviewed with the prospective provider. The schedule can be flexible and based on the needs of the participant. All existing services should be considered when creating a schedule.

## Setting Pay Rates

When deciding on pay rates, a few things to consider are:

- Participants' budget
- Rate caps associated with certain service codes
- Support hours needed
- Duties, qualifications, and experience of the provider
- Providers cannot earn less than Massachusetts' minimum wage

Support Brokers can give information about prevailing wages for similar services. Support Brokers can also assist with demonstrating how the budget works and the impact of the pay rate on the number of support hours the participant can receive.

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It is important to note that there are additional employer taxes that are added to the hourly rate for a provider. This fully loaded rate is referred to as the “billable rate” or “Cost to You” and is the rate that is charged to the participant’s budget. The Support Broker or FMS can provide a copy of the “Cost to you” worksheet that outlines the billable rates.

### Recruitment

The employer and participant need to identify and discuss with their Support Broker recruitment options for potential providers. The participant may already have someone in mind to hire.

If not, it is important to think about the connections the participant or their family have that might be useful. It can be helpful for the employer and participant to consider these relationship types when trying to recruit new providers; friends, family, community members with shared interest, and professional or paid relationships.

Guardians and spouses of the participants are not allowed to be paid providers. Parents can be providers if they meet certain requirements. Support Brokers will work with the employer to submit the Parents as a Worker Request Form for review.

Formal recruitment options are available. DDS contracts with [Rewarding Work](#) and offers an access code for free memberships to those who receive DDS services. Alternative recruitment sites include: [Handshake](#), [Care.com](#), and [Indeed](#). You can post help wanted ads at Colleges, Universities or in local newspapers, or on local bulletin boards. The cost of advertising/recruitment can be reimbursed from a participant’s budget.

There can be extensive work involved in hiring someone. This can include:

- Posting job ads and screening potential candidates
- Developing interview questions
- Supporting the participant for the interview
- Role playing questions
- Interviews should take place in a neutral location for everyone’s safety.

For most people, hiring a provider is a new experience and your Support Broker can assist in navigating this. It is important for the participant to identify additional expectations or modify expectations for the provider based on their increasing experience. Sometimes challenges arise once the employer/provider relationship begins. This may relate more to expectations for both parties than it does to the specific job description.

### Earned Sick Time Law

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As of July 1, 2015, The Commonwealth of Massachusetts has passed a law in which all Massachusetts employers must allow employees to take 'sick time' without impacting their job security. Providers who are of the employee provider type in the Participant Directed Program are included in this group and therefore affected by the passing of this law. For employers who have less than 11 employees, this is considered unpaid sick time. Employees accrue time at 1 hour per 30 hours worked up to 40 hours in a calendar year.

For participants that have 11 or more active employees, paid sick time must be provided. It is accrued at 1 hour for every 30 hours worked up to 40 hours in a calendar year. For these participants, a reserve should be built into their budget to account for this. For more information on [Sick Time for Employees](#).

### Establishing Ongoing Provider Progress Summary Documentation

The employer, participant, and Support Broker can request ongoing required documentation to be completed by the provider. This should be included in the job description and reviewed upon hiring. This documentation can include progress summary of goals, what activities were completed, etc. The employer, the participant, and Support Broker should decide upon the frequency, content, and method (email, meeting, etc.) of routine progress reporting. This should be completed minimally every six months. If the provider is living in the participant's home, progress documentation should be completed monthly and submitted to the Support Broker.

### Job Training

The employer and the participant are responsible for providing training based on the participant's support needs. This is an opportunity for the employer and participant to clearly explain the support needs and preferences. Some required training's are:

- DPPC
- [Budget Responsibilities Preventing Financial Abuse and Exploitation Document](#) and watch the [Video](#)
- Incident Reporting

### Ongoing Provider Performance Evaluation

The employer and the participant are responsible for establishing the frequency and content of a performance evaluation. This is an opportunity for the employer, participant, and the provider to review plans, goals, progress, pay rate related to job duties, schedules, and to discuss any concerns.

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## Creating Back Up Plans

The employer and participant should create a back-up plan. This is a plan that will be executed if a provider does not show up or is not available. This should be documented in the participant's ISP. Support Brokers are not emergency contacts.

## Resources

See [www.mass.gov/dds-self-directed-services](http://www.mass.gov/dds-self-directed-services) for more information.