

## Guidelines for the Landman Industry

Landmen are individuals who perform services related to researching land ownership rights and negotiating legal agreements governing the use of land. Landmen typically perform such services for companies in the energy, telecommunication, utility and oil and gas industries. Landmen may research the property rights of parcels of land by reviewing titles, deeds, and similar recording documents. Landmen also may be involved in negotiating an agreement with a landowner to obtain the rights for a company to use, develop, access or explore the land. Some companies have Landmen as part of their workforce. Other companies engage with Landmen who are independent contractors and perform services for a number of companies.

There are several factors used to determine whether an individual is an employee or an independent contractor. Some factors may indicate that the worker is an employee, while other factors may indicate that the worker is an independent contractor.

### Independent Contractor

If the majority of the following criteria are present in the engagement of a Landman to perform services within New York State, that Landman will be considered an independent contractor:

1. The Landman is either in an independently established business and holds himself/herself out to the public as such, or functions as a sole proprietor and holds himself/herself out as such.
2. The Landman negotiates a defined scope of work.
3. The Landman is free to perform services or seek out business opportunities for competitors, but may be restricted from doing so in areas less than 10 miles from the area where the Landman is operating.
  - (a) It is recognized that in some cases a Landman might be supplied confidential, proprietary and market-based information while performing services. Such information is typically otherwise protected under the laws of New York and the United States. Any provision or agreement in a contract with a Landman that restricts or protects the confidential and/or proprietary information given to or obtained by a Landman in the course of his or her work shall not be deemed indicative of employment as long as
    - (i) the provision is narrow in its scope, and
    - (ii) any restriction on the Landman is limited to the immediate geographic area (such as a specific town or township) in which the services are performed and is for an agreed-to period of time.
4. The Landman is not provided support staff, equipment or tools to perform the work, and is not given instructions as to what equipment or tools to use or where to purchase supplies or tools. In this sense, the Landman must make a significant investment in the equipment and tools used to perform the work. Because of the nature of certain legal documents used in this industry and the need for such documents to satisfy legal requirements beyond the expertise of a Landman, providing a lease form or similar legal "agreement" to a Landman governing the purchase, lease, acquisition or divestiture of property, right of way, easement or mineral rights shall not be deemed indicative of an employment relationship.
5. The Landman is not required to work a set schedule and is not required to work a set number of days or hours per week. The Landman must be free to set his or her own work schedule.

6. The Landman is not mandated to undergo training about how to perform the job of a Landman. "Orientation," such as an initial discussion about what a project entails or where the land-based project is located, will not be deemed "training." A Landman who requests and voluntarily participates in on-going professional training, such as on-the-job mentoring by a more senior Landman, will not be indicative of employment.
7. The Landman is free to refuse an assignment.
8. The Landman is not provided benefits, such as insurance, pension or paid leave. The payment of a bonus is not considered a "benefit" for purposes of this factor.
9. The Landman has executed a negotiated contract containing provisions consistent with the criteria contained herein, including a rate of pay negotiated by the Landman or his independent business.

## **Employee**

Several factors also may indicate that a Landman is an employee. In the event that a majority of the above criteria are not present in the engagement of a Landman in New York State, the presence of the following factors may indicate that the Landman will be considered an employee:

1. The Landman is mandated to undergo training about how to perform the job of a Landman.
2. The Landman is provided all of the necessary tools and equipment to perform services.
3. The Landman is completely restricted from working for competitors.
4. The Landman is required to work a set schedule and is required to work a set number of days or hours per week. The Landman is not free to set his or her own schedule.
5. The Landman is provided employee benefits, such as insurance, pension or paid leave.