

Independent Contractor

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PURPOSE:

This policy is intended to ensure that employees and independent contractors are properly categorized.

POLICY:

College policy presumes that all individuals who provide a service are employees unless there is evidence to support their classification as an independent contractor and the independent contractor agreement is executed.

A department intending to engage a service provider as an independent contractor must follow College approval and contracting procedures before the performance of services.

PROCEDURES:

When the College requires special skills for a limited period of time, such services can be obtained from an independent contractor. However, the person or firm providing the services must satisfy certain requirements as an independent contractor. If the criteria are not met, the individual must be hired as an employee and paid through the College payroll system.

Due to the nature of the College's business, anyone who teaches a course, credit or non-credit, ordinarily will be classified as employees.

A guest speaker is considered an independent contractor when a fee for services is agreed to prior to engagement.

Employees of the College cannot be retained as independent contractors concurrently.

Designation of independent contractor status is governed by the Internal Revenue Service (IRS) tax code and "common law" categories of evidence. It is imperative that a determination of employee or independent contractor be made in accordance with the tax code and "common law" criteria and that each case is fully documented and auditable.

The determination of a service provider's status as an employee or independent contractor must be made by the Chief Financial Officer (CFO) prior to any verbal or written agreements to perform personal or professional services. The CFO will make the determination of independent contractor or employee based on information provided on the **Independent Contactor Checklist (see attached)**. If a determination is made that a service provider is an independent contractor; the independent contractor agreement shall be executed.

If a College department engages an individual as an independent contractor, the department must document the necessary evidence to support this position, and obtain an executed independent contractor agreement.

In order to provide clarity, the following [TERMS](#) related to this policy are defined:

Contract: A legal agreement that establishes the right and duties of the contracting parties and constitutes a relationship giving each the right to seek remedy for the breach of those duties.

Employee: An individual paid through the College payroll system to perform a service for the College with the College making, as appropriate, state and federal withholdings. The relationship of employer and employee exists when the hiring department has the right to control and direct the service provider, not only as to the result to be accomplished by the work but also as to how, when, and where the services will be provided. The service provider is normally provided the tools and facilities to perform the function and is not at risk for profit or loss in this capacity. Examples of employees include faculty, adjunct faculty, hourly employees, support staff, professional staff, administrative staff, and student workers.

Guest Speaker: A non-employee engaged by the College to speak/lecture about a particular subject for a nonrecurring event. Fees paid to a speaker represent compensation for services and recipients of such are considered independent contractors. Guest speakers include guest lecturers in classes and speakers or presenters for symposiums, lecture series, or conferences. A gratuity paid to a guest speaker after-the-fact is an honorarium. Employees functioning in a capacity similar to a guest speaker must be processed through the payroll system.

Independent Contractor: An independent contractor is defined as an individual, organization, or company responsible to the College for the results of certain professional services, highly technical advice, or assistance under terms of an engagement, but is not subject to the College's control as to the means and methods of accomplishing those results. Commonly referred to as a consultant, freelancer, contractor, etc., the College controls only the contract obligation of the services provided in return for remuneration. Usually, a contractual relationship exists whereby the independent contractor is responsible for all aspects of the means and methods of the job. An independent contractor is fully liable for any job related actions, is not eligible for employee benefits, and can realize a profit or incur a loss. The College may require proof of adequate insurance from independent contractors. An independent contractor is solely responsible for the

IRS Form 1099 MISC: An Internal Revenue Service form used to report non-employee compensations and other miscellaneous income. IRS Form W-9 Request for Taxpayer Identification Number and Certification: An Internal Revenue Service form used to provide the College with a taxpayer identification number – social security number or employer identification number. A W-9 is required to be on file for any vendor or individual being paid by the College for services rendered as an independent contractor.

IRS “Common Law” Categories of Evidence: To determine whether an individual is an employee or an independent contractor under the “common law” categories of evidence, the relationship of the worker and the business must be examined. All information that provides evidence of the degree of control and the degree of independence must be considered in order to determine classification as an independent contractor or employee. According to the IRS, factors that provide evidence of control and independence fall into three categories: behavioral control, financial control, and type of relationship.

Determination of independent contractor status must be made by the CFO prior to any agreement to perform personal or professional services. Written agreements are required for all services provided to the College to ensure that verbal “understandings” do not become an agreement/binding until approved and as required herein an independent contractor agreement is signed.

The requesting department must complete the Independent Contractor Checklist (see attached). The form is designed to obtain important information to assist the CFO in determining whether a service provider is an independent contractor or an employee.

Accurate answers should be obtained through interviews with the potential service provider and based on the requirements of the services to be completed. A proposed letter of agreement should be developed as backup documentation for the checklist. The proposed letter of agreement should not contain any signatures at this time.

It is important to note that the Independent Contractor Checklist only provides indicators and each determination needs to be evaluated within the context of each unique situation by the CFO, therefore accurate and complete information and proposed documentation is necessary.

Upon completion, the Checklist and the proposed letter of agreement are forwarded to the CFO to determine employee or independent contractor status.

The CFO reviews the Checklist and the proposed letter of agreement and completes a determination worksheet. If necessary the CFO will contact the requesting department for additional information and discuss the results of the determination.

Upon final determination, the CFO will sign and indicate the determination on the Checklist and return the original package to the requesting department.

If the determination is employee status, the hiring department must complete the new hire paperwork and submit it to Personnel/Payroll Assistant. A signed employment contract should be forwarded to the Payroll Office. Due dates for submission of these documents are published by the Payroll Office.

If the determination is independent contractor status, the hiring department will execute the Independent Contractor Agreement/Contract. All parties involved will sign the Independent Contractor Agreement, and the independent contractor must complete the W-9 Request for Taxpayer Identification Number and Certification Form. All of these documents are required as official documentation.

In instances where the proposed services equal or exceed \$500, arrangements to engage an independent contractor will be made with a purchase order and must be approved prior to the commencement of the work. The documentation referred to above must be attached to the purchase order. When the purchase order is approved, a purchase order number will be issued. In situations where the proposed services are under \$500, a check request is allowable. After the contract has been fulfilled, the hiring department completes a check request form including all required approvals. The check request form, along with the W-9 Form, contractor agreement, and an official approved invoice are forwarded to the accounts payable department for payment. In situations where the proposed services equal or exceed \$25,000, the requesting individuals must follow the steps outlined in the purchasing policies requests for proposals and bids, this information can be obtained by contacting the Purchasing Department

APPENDICES

Include:

- Definition/Questions to ask about “Independent Contractor (self-employed) or Employee”
- Independent Contractor Checklist

Independent Contractor (Self-Employed) or Employee?

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral Control

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work.

The behavioral control factors fall into the categories of:

- Type of instructions given
- Degree of instruction
- Evaluation systems
- Training

Types of Instructions Given

An employee is generally subject to the business's instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow when performing the work.

Degree of Instruction

Degree of Instruction means that the more detailed the instructions, the more control the business exercises over the worker. More detailed instructions indicate that the worker is an employee. Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.

Note: The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

Evaluation System

If an evaluation system measures the details of how the work is performed, then these factors would point to an employee.

If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.

Training

If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship. However, independent contractors ordinarily use their own methods

2. Financial Control

Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job.

The financial control factors fall into the categories of:

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment

Significant investment

An independent contractor often has a significant investment in the equipment he or she uses in working for someone else. However, in many occupations, such as construction, workers spend thousands of dollars on the tools and equipment they use and are still considered to be employees. There are no precise dollar limits that must be met in order to have a significant investment. Furthermore, a significant investment is not necessary for independent contractor status as some types of work simply do not require large expenditures.

Unreimbursed expenses

Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.

Opportunity for profit or loss

The opportunity to make a profit or loss is another important factor. If a worker has a significant investment in the tools and equipment used and if the worker has unreimbursed expenses, the worker has a greater opportunity to lose money (i.e., their expenses will exceed their income from the work). Having the possibility of incurring a loss indicates that the worker is an independent contractor.

Services available to the market

An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

Method of payment

An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

3.Type of Relationship

Type of relationship refers to facts that show how the worker and business perceive their relationship to each other.

The factors, for the type of relationship between two parties, generally fall into the categories of:

- Written contracts
- Employee benefits
- Permanency of the relationship
- Services provided as key activity of the business

Written Contracts

Although a contract may state that the worker is an employee or an independent contractor, this is not sufficient to determine the worker's status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self employment tax. How the parties work together determines whether the worker is an employee or an independent contractor.

Employee Benefits

Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance. Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.

Permanency of the Relationship

If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.

Services Provided as Key Activity of the Business

If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

Assumptions to Avoid in Classifying Workers

A worker will not be treated as an independent contractor simply because they wanted or asked to be treated as such.

The signing of a contract does not ensure that a worker will be treated as an independent contractor.

The fact that a worker works sporadically, inconsistently or is on call does not ensure independent contractor status.

The fact that a worker works for more than one business or entity does not ensure independent contractor status.

The College will weigh all factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

INDEPENDENT CONTRACTOR CHECKLIST

IRS CLASSIFICATION FACTOR TABLE		Employee	Contractor
Behavioral Control: The facts show whether or not there is a <u>right</u> to direct and control the details and means by which a worker performs services (regardless of whether or not the right is exercised).			
1. Instructions	Will Your Company have the right to give the worker instructions about when, where, and how he or she is to do the job? (Employees are subject to this type of instruction, but generally independent contractors are not.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Training	Will the worker receive training from the Your Company ? (Employees generally receive training from their employer; independent contractors typically determine their own work methods).	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Financial Control: Assesses a worker's financial independence and risk.			
3. Significant Investment	Has the worker invested in facilities, such as an office or equipment, to perform proposed services? (Employees generally do not personally own or rent an office, shop or equipment.)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
4. Payment of Expenses	Will Your Company pay the worker's business or travel expenses? (Employers pay all expenses for an employee, whereas independent contractors often absorb these expenses and are not paid directly for them.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Services Available	Does the worker make his/her services available to other employers? (A worker who provides services for a number of unrelated persons or firms is generally an independent contractor.)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
6. Incremental Payment	Will Your Company pay the worker by the hour, week or month rather than by the job? (Employees are paid by the hour, week or month, whereas independent contractors often charge a flat fee. Notable exceptions might be accountants, attorneys)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Risk of Profit Or Loss	Will the worker bear the risk of making a profit or losing money under this arrangement? (Employees are paid a salary/wage whether or not the company is profitable. Independent contractors may suffer a loss or make a profit depending on the expenses incurred.)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Relationship of Parties: This examines the overall nature of the relationship including the intent of parties concerning status and control of the worker.			
8. Regular Business Activity	Is the work to be performed part of the regular business of Your Company , such as teaching, research or administration? (In most cases, such duties would be performed by an employee)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Employee Benefits	Will the worker receive any employee benefits? (Independent contractors do not received such benefits as health insurance, workers' compensation coverage, or paid vacation or sick leave.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Written Contract	Will a written contract or purchase order be issued, describing the worker as an independent contractor? (Absent such a contract or purchase order, employee status is normally presumed.)	<input type="checkbox"/> No	<input type="checkbox"/> Yes
11. Right to Terminate	Could the worker or Your Company terminate the relationship at any time without incurring liability? (Most independent contractor agreements require at least 30 days' notice for early termination.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12. Withholding Of Payment	Is Your Company entitled to withhold payment for unsatisfactory work? (Most independent contractor agreements allow this, while employer-employee relationships to not.)	<input type="checkbox"/> No	<input type="checkbox"/> Yes