

Payments to Individuals: Classifying a Worker as an Employee or Independent Contractor

A. General

1. The department head or employing official shall determine whether a worker is an “Employee” or an “Independent Contractor” prior to any performance of work or service.
2. Each Area Business Office shall provide guidance and assistance in the classification of workers in its respective area.
3. The University shall adhere to the “Common Law Factors” discussed in IRS Publication 15-A as the primary source of information to assist in the classification of a worker as an independent contractor or an employee. See below for details.
4. The Office of the Treasurer, Accounts Payable Department, Purchasing Division and Payroll Department shall perform the final audit and review of all classifications before approval for payment.
5. University employees (anyone on active payroll) shall be paid through the University payroll process for all services. Employees shall not be paid as Independent Contractors, although they may perform additional services unrelated to their regular duties.

B. Classifying a worker as an Employee or Independent Contractor

1. Classification of worker, as an employee or independent contractor, shall be in accordance with the “Common Law Rule” and the three “Categories of Evidence” as stated by the Internal Revenue Service (listed below).
2. After determining each individual’s worker classification, classify the taxpayer as a US Citizen, Resident Alien, or Nonresident Alien as listed in Section E-7-4.
3. Internal Revenue Service Guidelines for Classifying a Worker as Employee or Independent Contractor:
 - a. The Common Law Rule: A worker is an employee under the Common Law Rules if the person for whom he/she works has the right to direct or control him in the way he works, both as to final results and as to the details of when, where and how the work is to be done. However, the employer need not actually exercise the control; it is sufficient that he/she has the right to do so. The individual is an independent contractor if the employer does not possess that right of control.
 - b. There are three “Categories of Evidence” that may aid in the determination of whether or not the requisite right of direction and control

Payments to Individuals: Classifying a Worker as an Employee or Independent Contractor

exists in a given situation. No one or small group of the factors under these categories is necessarily controlling. The factors are to be weighed

against those that indicate an independent contractor status, depending on the occupation under consideration. The following is a list of the most persuasive information that should be considered.

1. Behavioral Control: Facts that show whether the employer has a right to control or direct the worker in the performance of the specific tasks for which the worker was engaged.
 - a) A person who is required to comply with oral or written instructions about when, where and how to work is ordinarily an employee.
 - b) Training of an individual by an experienced employee is a factor of control because it indicates that the employer wants the services to be performed in a particular method or manner. Independent contractors use their own methods and do not receive training from the entity purchasing their services.
2. Financial Control: Facts that show whether the employer has a right to control the manner in which the worker conducts the aspects of his/her business activities.
 - a) If the worker must devote his/her full time to the business of the employer, rather than engaging in other gainful work, the worker is probably an employee. Independent contractors are free to work when, for whom, and for as many employers as the worker pleases. Note that full-time does not necessarily mean an eight-hour day or a five-day work week.
 - b) Payment for work done by the hour, week or month is usually the manner for compensating employees; independent contractors are customarily paid by the job in a lump sum or on a commission basis.
 - c) Payment by the employer of the worker's business and/or traveling expenses is a factor indicating control over the worker. Most independent contractors are not reimbursed for expenses.
 - d) Furnishing tools, materials, and the like by an employer is indicative of control over the worker. Independent contractors provide their own tools and equipment.

Payments to Individuals: Classifying a Worker as an Employee or Independent Contractor

However, in some jobs it is customary for the employees to use their own hand tools.

- e) A significant investment by persons in facilities used by them in performing services for another tends to show an independent contractor status. Facilities include equipment or premises necessary for the work but does not involve tools, instruments, clothing and other items provided by employees as common practice in their trade.
 - f) A person who is in a position to realize a profit or suffer a loss as a result of his own services is generally an independent contractor.
 - g) Individuals who make their services available to the general public by “hanging out a shingle,” holding business licenses, supplying advertising, or maintaining telephone directory listings are independent contractors.
 - h) Independent contractors receive income from more than one client or source while employees receive income for the relevant activity from only one source.
3. Relationship of the Parties: Facts that show how the parties perceive their relationship.
- a) Both parties must be in agreement as to the individual’s classification. Use of the University’s “Agreement Between Independent Contractor and Client” will alleviate any misunderstandings that might arise as to classification status.
 - b) Independent contractors receive no benefits such as medical insurance, vacation and temporary disability leave, or worker’s compensation. Only employees are entitled to these benefits.
 - c) An employer can exercise control through the right to discharge an employee. However, an independent contractor cannot be fired as long as the service measures up to the contract specifications.
 - d) An employee has the right to end the relationship with the employer at any time without incurring a liability. An independent contractor agrees to complete a specific job and is responsible for its satisfactory completion or is

Payments to Individuals: Classifying a Worker as an Employee or Independent Contractor

legally obligated to make good for failure to complete the job.

- e) Integration of the person's services into the business operations of the University generally shows that the worker is subject to direction and control. Independent contractors will normally perform services that cannot be rendered by individuals already employed by the University.