

## University Of Dallas Policy

# Employees vs. Independent Contractors

## Reason for Policy

The IRS has expressed concern that many colleges and universities are not classifying employees as independent contractors and, as a result, are failing to pay substantial amounts of employment tax. Employment arrangements should be carefully examined to determine if the institution has properly classified its workers as **employees** or as **independent contractors**. While the law regarding employees and independent contractors has not changed, the IRS has recently given high priority to the correct classification of employment relationships and the tax implications of decisions made. The IRS has announced that its emphasis on employment relationships and tax reporting will continue in the future.

## Statement

The purpose of this policy statement is to provide departmental budget managers and others with budget responsibilities a basic understanding of IRS requirements and a procedure for ensuring that individuals hired or contracted to perform services are properly classified. Please note that payments made to a corporation for the services of an individual are not affected by this policy.

## Definitions

**Employee:** an individual who performs services that are subject to the will and control of an employer-both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.

**Independent Contractor:** an individual over whom the employer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

**Employer's Responsibilities:** Employers are legally required to pay FICA, FUTA, and withhold income tax on the wages of workers classified as employees. If the worker is legitimately characterized as an independent contractor, the employer is not responsible for employment-related taxes. The employer is responsible, however, for reporting to the IRS, on form 1099, non-employee compensation in excess of \$600.

**Penalties for Misclassification:** If a worker is determined by the IRS to be an employee instead of an independent contractor, the employer is responsible for paying any taxes that should have been withheld and were not, including federal income tax, social security tax (both the employer's and the employee's shares) and Medicare taxes, plus interest. In addition, the penalty for misclassification is 100% of the taxes that should have been withheld.

## Procedures

Departments are encouraged to complete the process outlined below in advance so that payment to the worker will not be delayed. The independent contractor determinations are subject to audits and the information provided would be made available to auditors and others as required.

### Step 1: Determining Correct Classification

Determining the correct classification is not an easy task. The IRS has provided a list of [20 common law factors](#) to assist in determining if the worker is an employee or an independent contractor. These factors are intended as guidelines, not as strict rules. In fact, the IRS itself states, "The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed." In addition to these common law factors, two basic questions should help clarify the issue:

1. Does the University pay as employees others who perform essentially the same duties that are to be performed by this worker?
2. Has this worker previously been paid as an employee to perform essentially these same tasks?

If the answer to either of these two questions is yes, then the worker in question is considered to be an employee, and the person certifying the status need not proceed with the common law test. After reviewing the 20 common law factors, the departmental *employee directly responsible for the work to be performed* should determine whether the contract being reviewed either creates or is likely to be executed in a manner that could create an employer/employee relationship. If the relationship is unclear after analysis, a determination of **employee** should be established. The departmental employee who is required to certify the independent contractor/employee status may find it difficult to reach a definite determination and may need assistance. In such instances, help can be obtained by calling Henry Glospe in the Business Office or Cathy Graham, in the Payroll Office. If the worker is believed to be an Independent Contractor, then the Department should go on to the next steps. Or, contact Mary Laughlin in the Personnel Office, 721-5382, for instructions on how to set up the individual as an employee.

### Step 2: Completing the Necessary Forms

To avoid misclassification, the Department must complete an **Independent Contractor/Employee Status Determination Form and the Supplemental Information to Support the Independent Contractor/Employee Status Determination Form** for all personal service contracts for the University of Dallas.

### Step 3: Send the Completed Forms to the Business Office for Review

In order for a worker to be paid as an independent contractor, the Status Determination Form and the Supplemental Information form must be sent to the Business Office with any additional pages, exhibits, or other documentation supporting the department's decision.

These forms will be reviewed by the Business Office to verify appropriate classification. Because departmental interpretation of the 20 rule test may be more liberal than the likely interpretation of an IRS agent, the Business Office reserves the right to correct any determination that is not supported by the facts available.

All requests for payment for services, via A/P voucher must include a copy of this signed form. Requests for payment for workers who have not been certified will be denied, and the Department's recourse will be to pay the worker as an employee or begin the process for determining independent contractor status.

### Contesting a Determination

If you feel that you have received an inappropriate determination from the Business Office, you may ask the Business Office to submit to the IRS a form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income tax Withholding. While waiting for the IRS determination, which takes 6-12 months, the service provider will be paid as an employee. If the IRS determines the correct classification to be independent contractor, the taxes withheld will be remitted to the worker.

# INDEPENDENT CONTRACTOR/EMPLOYEE STATUS DETERMINATION FORM

I certify that I have reviewed the services to be provided by \_\_\_\_\_  
(Name of Worker) against the two basic questions and the 20 common law factors as provided in the [Employee vs. Independent Contractor Policy Statement](#). Based on the results of my review, the individual to be engaged under this contract appears, for federal employment tax withholding and related reporting purposes, to be (Please circle):

- an Independent Contractor
- an Employee

The common law factors (refer to the [20 Rule Common Law Test](#)) that I used to reach this determination are:

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I have attached the Supplemental Information statement and any other documents that support this determination. I understand that the proper status of the worker depends on the manner in which the work is performed and on the nature of the relationship between the worker and the University personnel responsible for the work being performed. Therefore, the status of the worker for federal employee tax withholding and related reporting purposes will be re-determined when the manner in which the work is performed or the relationship between the worker and the University changes sufficiently to alter the validity of this certification.

I hereby declare that the information provided in this document is true and correct and that I have sufficient knowledge of, authority, and responsibility for the work to be performed under this contract to effectively make this certification.

\_\_\_\_\_  
Department for whom services are to be performed Date

\_\_\_\_\_  
Signature and title of individual completing this form Phone

NOTE: For this certification to be considered adequate, it must be signed by a University employee with responsibility to supervise and monitor the work to be performed. Certifications by clerical staff and others with insufficient knowledge of or responsibly for the work to be performed will be rejected as inadequate.

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**REVIEWED BY UNIVERSITY OF DALLAS BUSINESS OFFICE**

\_\_\_\_\_  
Signature Date

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**SUPPLEMENTAL INFORMATION TO SUPPORT THE INDEPENDENT CONTRACTOR/EMPLOYEE STATUS DETERMINATION FORM**

Department seeking to contract for services: \_\_\_\_\_

Department address and telephone: \_\_\_\_\_

Budget number to be used to pay for these services: \_\_\_\_\_

Name of worker: \_\_\_\_\_

Business address of worker: \_\_\_\_\_

(Note: The payee address on the A/P Voucher should be the individual's permanent home address.)

**A.** Does the University pay as employees others who perform essentially the same duties that are to be performed by this worker?

\_\_\_\_\_

**B.** Has this worker previously been paid as an employee to perform essentially these same tasks?

\_\_\_\_\_

1. Services Required and Dates to be Performed (If worker is a guest speaker or guest lecturer, please list speaking date, instructor of record, and course number and title. If speech is for a conference, workshop, symposium, or lectures please include a copy of the conference brochure.)

\_\_\_\_\_  
\_\_\_\_\_

2. Terms of Payment (include fee for services and whether you intend to reimburse expenses)

\_\_\_\_\_

3. Who will provide the tools and materials needed to complete this assignment?

\_\_\_\_\_

4. Who will be providing instruction or training for this work?

\_\_\_\_\_

3. Terms of Payment (include fee for services and whether you intend to reimburse expenses)

\_\_\_\_\_

4. Who will provide the tools and materials needed to complete this assignment?

\_\_\_\_\_

5. Who will be providing instruction or training for this work?

\_\_\_\_\_

6. What is this worker's work schedule? \_\_\_\_\_

\_\_\_\_\_

7. Where will this work be performed? \_\_\_\_\_

\_\_\_\_\_

8. To what other organizations does this worker provide essentially these same services?

\_\_\_\_\_

\_\_\_\_\_

9. Does the University have the right to fire this worker, or does the worker have the right to quit, without incurring liability?

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Please attach any relevant documentation such as business card, letterhead, advertising or other information that would support the independence of the worker.

## Twenty Rule Common Law Test

FACTORS	EMPLOYEE	INDEPENDENT CONTRACTOR
1. INSTRUCTIONS	A worker who is required to comply with instruction about when, where and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished. Some employees may work without receiving instructions because they are highly proficient and conscientious workers. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.	An independent contractor decides how to do the job, establishes his or her own procedures, and is not supervised. The entity engaging his or her services is only interested in the end result.
2. TRAINING	Training of a worker by an experienced employee working with him or her, by correspondence, by required attendance at meetings, and by other methods, is a factor of control in dictating that the employer wants the services performed in a particular manner. This is especially true if the training is given periodically or at frequent intervals.	An independent contractor ordinarily uses his or her own methods and receives no training from the purchaser of the services. He or she is not required to attend meetings.
3. INTEGRATION	If the individual's services are so integrated into an employer's operations that the success or continuation of the business depends on the performance of the services, it generally indicates employment.	If the individual's performance of service and those of the assistants establish or affect his or her own business reputation and not the business reputation of those who purchase his services, it is an indication of an independent contractor relationship.
4. SERVICES RENDERED PERSONALLY	If the services must be rendered personally, it indicates the employer is interested in the methods, as well as the results.	An individual's right to substitute another's services without the employer's knowledge suggests the existence of an independent relationship.
5. HIRING ASSISTANTS	An employee works for an employer who hires, supervises, and pays assistants. If an employee hires and supervises assistants at the direction of the employer, he or she is acting as an employee in the capacity of a foreman for or representative of the employer.	An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor.
6. CONTINUING RELATIONSHIP	The existence of a continuing relationship between an individual	The relationship between an independent contractor and his or her

	and the person for whom he or she performs services indicates an employer-employee relationship. If the arrangement consists of continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, are seasonal in nature, or if the person actually works for only a short time.	client ends when the job is finished.
7. SET HOURS OF WORK	The establishment of set hours of work by the employer is a factor of control. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.	An independent contractor is the master of his or her own time.
8. FULL-TIME WORK	Full-time work for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. Full time does not necessarily mean an eight-hour day or a five-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and the customs in the locality. These conditions should be considered in defining full-time. Full-time services may be required even though not specified orally or in writing.	An independent contractor is free to work when he or she chooses, and to set his or her daily or weekly schedule. An independent contractor would normally perform services less than full time for one principal.
9. WORK DONE ON PREMISES	Doing work on the employer's premises, or on a route, or at a location designated by an employer implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he or she wants to use these facilities. However, the fact that work is done off the premise does not indicate freedom from control since some occupations, e.g., employees of construction contractors, are necessarily performed away from the premises of the employer.	Doing work away from the employer's premises when it could be done on the employer's premises indicates a lack of control, especially when the work is free from supervision.

10. ORDER OR SEQUENCE SET	If a person must perform services in the order to sequence set by the employer, it shows that the worker is not free to follow an independent pattern of work, but must follow the established routines and schedules of the employer. Often, because of the nature of the occupation, the employer either does not set the order of services or sets them infrequently. Control is sufficiently shown, however, if the employer retains the right to do so.	If the person engaging the services is not interested in the order or sequence by which the individual completes the work, there is an indication that there is a lack of control over the manner and means by which the work is performed.
11. REPORTS	The submission of regular oral or written reports indicates control since the worker must account for his or her actions.	An independent contractor is not required to file reports, which constitute a review of his or her work. However, reports related only to an end result is not an indication of employment or independence.
12. PAYMENTS	Payment by the hour, week, or month represents an employer-employee relationship. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer/employee relationship.	Payment on a commission or job basis is customary where the worker is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour.
13. EXPENSES	Payment of the worker's business and travel expenses by the employer indicates control over the worker.	A person who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since the person is accountable to no other person for the expenses, the person is free to work according to his or her own methods and means.
14. TOOLS AND MATERIALS	The furnishing of tools, materials, etc., by the employer indicates control over the worker. In some occupations and industries it is customary for individuals to provide their own tools, which are usually small hand tools; in that case, workers may also be considered to be employees.	When a worker furnishes tools and materials, especially when a substantial sum is involved there is an indication of independence.
15. INVESTMENT	The furnishing of all necessary facilities by the employer tends to indicate an employment relationship. Facilities include, generally, equipment or premises necessary for the work but not tools instruments, clothing, etc.	A significant investment by the worker in facilities used by him in performing services for another tends to show an independent status. In order to be significant, the investment must be real, essential, and adequate.

	that are commonly provided by employees in their particular trade.	
16. PROFIT OR LOSS	When workers are insulated from loss or are restricted in the amount of profit they can gain, they usually are employees. The opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.	The possibility of a profit or loss for the worker as a result of these services generally shows independent contractor status. Profit or loss implies the use of capital by the individual in an independent business. Whether a profit is realized or loss suffered generally depends on management decisions: that is, the one responsible for a profit or loss can use his or her own ingenuity, initiative, and judgment in conducting the business or enterprise. Factors that affect whether or not there is a profit or loss are whether the worker hires, directs, and pays assistants; has his own office, equipment, materials, or other facilities for doing the work; he or she has continuing and recurring liabilities or obligations; his or her success or failure depends on the relation of his or her receipts to his or her expenditures; he or she agrees to perform specific jobs for prices agreed upon in advance; and he or she pays expenses incurred in connection with the work. Independent contractors typically can invest significant amounts of time or capital in their work without any guarantee of success.
17. WORKS FOR MORE THAN ONE PERSON OR FIRM	It is possible that a person may work for a number of people or firms and still be an employee of one or all of them because he or she works under the control of each firm.	Work for a number of persons or firms at the same time usually indicates an independent contractor status because the worker is usually free, in such cases, from control by any of the firms.
18. OFFERS SERVICES TO GENERAL PUBLIC	If a worker performs service for any one person does not advertise his or her services to the general public, does not hold licenses or hire assistants, and performs services on a continuing basis, it is an indication of a n employment relationship.	The availability of services to the general public usually indicates independent contractor status. This may be evidenced by the worker having his or her own office and assistants, hanging out a "shingle" in front of his or her home or office, holding business licenses, maintaining business listings in telephone directories, or advertising in newspapers, trade journals, magazines, etc.
19. RIGHT TO FIRE	If an employer has the right to discharge an individual at will without liability, that worker is considered an employee. The	An independent contractor cannot be discharged as long as he produces a result that measures up to his contract specifications. However, the

	employer exercises the control through the ever-present threat of dismissal, which causes the worker to obey instructions. A restriction on the employer's right to discharge in a labor union contract does not detract from the existence of an employment relationship.	relationship can be terminated with liability.
20. RIGHT TO QUIT	The right to quit at any time without incurring liability indicates an employer/employee relationship.	An independent contractor usually agrees to complete a specific job and he or she is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job. If the principal terminates an independent contractor on a contract job without cause, the principal is still liable to the independent contractor for the job.