



The
UNIVERSITY
of **VERMONT**

Policy V. 4.3.7.1

Responsible Official: Vice President for
Finance and Administration

Effective Date: January 1, 2007

Employee vs. Independent Contractor

Policy Statement

The University must properly determine whether a personal service provider should be classified as an employee or as an independent contractor before any services are performed or purchase requisitions are initiated. This policy provides guidance for determining the appropriate worker classification (employee vs. independent contractor) of individuals providing services to the University.

Reason for the Policy

The Internal Revenue Service (IRS) and other government agencies assess employers with significant penalties for misclassifying employees as independent contractors. The University must apply common standards in order to reduce the financial and political risks of such misclassifications. The purpose of this policy is to provide a standard process for determining the appropriate worker classification of individuals engaged to perform services for the University. Further, its purpose is to develop documentation supporting the respective department or unit's review and analysis for each individual compensated as an Independent Contractor by the University, in the event of a government audit.

Strategic Direction

This policy supports the following goal in the University's Strategic Plan
http://www.uvm.edu/president/?Page=strategic_planning/strategicplan.html :

- Focus the human, fiscal, environmental, technological and physical resources of the University on institutional values and priorities.

Applicability of the Policy

This policy applies to all members of the University of Vermont community who engage individuals to perform services for the University, authorize expenditures related to such services, or process payment transactions.

Policy Elaboration

The procurement of services, unlike the procurement of goods, requires an evaluation of whether a service provider should be classified as an employee or as an independent contractor of the University. This evaluation and classification must be based upon IRS guidelines, not on administrative ease or relative costs.

The characterization of an individual as either an independent contractor or as an employee has important tax and fiscal consequences to both the University and the individual. When faced with a worker classification issue during the course of an employment tax audit, the IRS will consider individuals performing personal services to the University to be employees, absent a reasonable basis for classification as an independent contractor.

Accountability

The responsibility for the proper classification of an individual as an employee or an independent contractor rests with the respective dean, director or chair of the unit/department obtaining the personal services.

Definitions

Employee-employer relationship: An employee-employer relationship exists when the University has the right (whether or not it exercises it) to supervise, control or direct the manner of performance as well as the result of the service.

Independent contractor relationship: An independent contractor relationship exists when the University has the right to specify the result to be accomplished by the work, but not the means and methods by which the result is to be accomplished.

Procedures

Classification Criteria

In order to compensate an individual as an independent contractor, a University employee familiar with the individual and with the services to be performed, must first review the

Employee vs. Independent Contractor Classification Criteria, which summarize the IRS' 20 common law factors, grouped by behavioral control, financial control, and relationship of the parties. Each of the 20 common law factors are presented as a question, an affirmative response to which either strengthens or weakens, as applicable, the case for considering the individual an independent contractor of the University. If review of the classification criteria in their entirety, in consideration of the relevant facts, does not present a strong case for compensating the individual as an independent contractor, payment of the individual should be pursued through HR/Payroll.

Employee vs. Independent Contractor Status Determination Form

If consideration of the relevant facts presents a strong case for classifying the individual as an independent contractor, an Employee vs. Independent Contractor Status Determination Form ("Form") is then completed.

Note: If the Form as completed, at any point, indicates that the individual should be compensated as an employee, a purchase requisition may not be initiated; rather, any such payment for services rendered should be initiated through HR/Payroll. If the Form as completed indicates that the individual should be classified as an Independent Contractor, the information provided will be made available to internal and external auditors, IRS examiners and others as required.

Section I: General

The Form must fully identify the name of the service provider (payee), taxpayer identification number, purchase requisition number, the unit/department, and the name, phone #, and e-mail address of the preparer of the Form.

The Form must include a response as to whether the individual is a US citizen, Lawful Permanent Resident (a.k.a. green card holder), or Foreign National.

If the individual is a Foreign National, additional documentation will be required pursuant to the Payments to Nonresident Aliens Policy and the Provost's Memo on Payment of Honoraria and Expenses to Foreign Visitors. Further, a response should be provided in the space labeled "Gross Up? Yes ___ No ___" as to whether the payment should be "grossed up," at the expense of the budget, to cover any federal and state income tax withholding that may be required for a payment to a nonresident alien individual. If the question is not answered, the default is for any applicable income taxes to be withheld from the individual's payment, resulting in a lower-than-requested payment amount.

Section II: Relationship with the University

It is incumbent upon the department or unit acquiring the services of an individual to verify, and accurately reflect on the Form, whether the individual has been paid as an employee in the current or previous calendar year. Contact HR/Payroll at 6-3150 for confirmation.

Note: Any paid employment in the current or previous calendar year, including student-employment, work-study employment and temporary-employment, precludes the individual from being classified as an independent contractor of the University.

Section III: Classification Guidelines

The Form must accurately reflect the completion of the respective Part (Part A: Guest Lecturer, Speaker, Grand Rounds presenter; Part B: Researcher, or Part C: An Individual Not Covered Within Parts A or B) that best describes the services to be performed.

Section IV: Certification

A completed Form supporting an Independent Contractor determination must be certified by the unit or department's dean, director, chairperson, or authorized designee thereof.

Submission of the Form

A completed Form supporting an Independent Contractor determination, and certified by the unit or department's dean, director, chairperson or authorized designee, must be submitted to Procurement Services, via fax at 656-8684, to support a purchase requisition for personal services.

A purchase requisition for personal services will only be processed by Procurement Services if a completed Form has been submitted that supports an Independent Contractor determination, and has been certified by the unit or department's dean, director, chair, or authorized designee.

IRS Form SS-8

If unusual circumstances cause the department or individual to resist classification as an employee, despite the Classification Criteria or Employee vs. Independent Contractor Form pointing to an "employee" determination, the hiring unit or department may consider requesting that an official determination from the IRS be initiated, at the discretion of the Controller. The IRS' determination process, which may take 3-4 months, involves the University (via the Controller) submitting Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding."

Forms

[Employee vs. Independent Contractor Classification Criteria](#)

[Employee vs. Independent Contractor Status Determination Form](#)

Contacts

Questions related to the daily operational interpretation of this policy should be directed to:

HR/Payroll, payroll@uvm.edu

656-3150 (verification of existing employment; guidance for initiating payment as employee)

Procurement Services

Fax 6-8684 (to submit Form)

Assistant Controller, Tax and Treasury Services

656-0674 (regarding IRS Form SS-8)

The Vice President for Finance and Administration is the official responsible for the interpretation and administration of this policy.

Related Documents / Policies

[Contract Approval and Signatory Authority Policy](#)

[Payments to Nonresident Aliens Policy](#)

[Provost's Memo on Payment of Honoraria and Expenses to Foreign Visitors](#)

Effective Date

Approved by the President on September 29, 2006

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