Changes to the Employee v Independent Contractor Policy

WHAT IT MEANS FOR YOU

12/3/18
Agenda

1. Explain why are we changing the policy
2. Define “Independent Contractor”
3. Describe new process
Why are we changing the policy anyway?

- TO IMPROVE OUR CLASSIFICATION PROCESS BASED UPON IRS INTERPRETATION OF OUR CURRENT POLICY
Why are we changing the policy?

UVM was selected for IRS audit

• Though good policies protected the university from penalties relating to most of what the IRS looked at...

• The IRS suggested improvements relating to how we categorize employees vs independent contractors
Why are we changing the policy?

UVM chose to agree with the IRS determination

- Payments for people that should have been employees were subject to 10.68% tax
  - This amount would have been paid as employment tax if we had paid them correctly
Why are we changing the policy?

• Moving forward, UVM is bound by the agreement.

• If the IRS determines that another employee was paid as an independent contractor, those payments will be subject to penalties, fines and interest in addition to the tax.

  • Adds up to a **roughly 50% tax**

  • This tax will be charged back to **your budgets**!
What is the difference between an employee and an independent contractor?
Employee v Independent Contractor

- There are certain types of workers who will always be an independent contractor:
  - Those with a W-9 (or W-8BEN-E) that proves the payee is not an individual
    - Note: a sole proprietor is treated the same as an individual
  - Freelancers
    - writers, graphic designers, photographers, etc.
  - SARE projects
  - NCAA America East referees
Employee v Independent Contractor

- There are certain types of workers who will always be an employee:
  - Instructors, lecturers, teachers
    - Yes, even tutors and yoga instructors!
  - Researchers
  - Anyone responsible for developing curricula or course material for UVM
  - If there is a UVM employee doing this body of work
Employee v Independent Contractor

- For everyone else, determining the difference is not always clear
- Less about “ticking off boxes”
- More about the nature of the relationship
The nature of the relationship is determined by analyzing the following factors:

- Behavioral Control
- Financial Control
- Type of Relationship
Employee v Independent Contractor

• These questions help us to understand the nature of the relationship

  • No single factor is the determining factor

  • If UVM has “control” over the worker, that person should be categorized as an employee
Behavioral Control

Behavioral Control refers to whether UVM has control over how the worker does the job.
Behavioral Control

Does UVM train the worker on how to do the work?

Does UVM dictate what hours the worker works?

Does the worker work on UVM premises?

Does the worker work “full time” or its equivalent at UVM?

Does the worker report to a UVM employee?

Does UVM have the right to determine in what order tasks (other than finished products) are to be completed?
Financial Control

Financial Control refers to whether UVM has the right to control economic aspects of the worker’s job
Financial Control

Does UVM pay the worker on a regular basis (weekly, monthly, etc.) or by project?

Does the worker have their own liability insurance?

Does UVM reimburse the worker for their expenses?

Does the worker make their services available to the general public?

Does the worker use UVM equipment to perform the work?
Type of relationship

Whether the facts and circumstances seem like an employee-employer relationship
Type of relationship

- Does the worker provide any sort of instruction (a key aspect of the university)?
- Does the worker perform a function that is substantially similar to the work of any UVM employee?
- Does the worker receive UVM employee benefits?
- Does the worker have access to UVM email or sensitive university information?
- Has the worker been designated as an employee for this work in the past?
- Does the worker do research (another key aspect of the university)?
What is the new process?
The New Process

1. Contact HR Rep to confirm whether the service provider is or has been employed by UVM
2. Obtain W-9 for the service provider
3. Complete the Electronic EIC Determination Form online
4. The Electronic EIC Determination Form will give you a determination
5. If the determination is “IC” attach the signed form to the service agreement and/or requisition
The New Process

• Step 1: Contact your HR Rep to confirm current / prior employment

• Step 2: Obtain W9

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<thead>
<tr>
<th>Name (As shown on your income tax return)</th>
<th>MICKEY MOUSE</th>
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<tbody>
<tr>
<td>Business Name (if different from above)</td>
<td>M &amp; M CASTLE BUILDERS</td>
</tr>
<tr>
<td>Federal EIN OR</td>
<td>12-345678</td>
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Check only ONE federal tax classification:

- [x] Individual/Sole Proprietor or single-member LLC
- [ ] C Corporation
- [ ] S Corporation
- [ ] Partnership
- [ ] Trust/estate
- [ ] Limited Liability Company* If you checked Limited Liability Company you MUST enter tax classification (C=C Corporation, S=S Corporation, P=Partnership) ______ Other_________________

• If Individual / Sole Proprietor box is checked, proceed with Employee vs Independent Contractor determination
The New Process

• Step 3: Complete the new Electronic EIC Determination Form
  • Once the EIC form is completed, you will be notified of your worker’s determination
  • A copy of the form will be sent to Tax Administration to monitor for multiple submissions for the same person

• Step 4: The EIC Form will provide a determination
  • Work should not commence until a final determination is made and any necessary documentation is completed.
The New Process

• Step 5A: If the EIC form determines your worker should be an employee...
  • You must go to HR to have the worker hired on as an employee
  • The hiring process has not changed
  • If you made a human-error mistake resulting in an incorrect determination, you can speak with Tax Administration for review
  • If you believe you filled out the form correctly and feel that the determination is incorrect, the Controller can request a determination from the IRS by filing Form SS-8.
The New Process

• Step 5B: If the EIC form determines your worker should be an independent contractor...
  ◦ Complete a service agreement, if $1,000 or more
    ◦ If greater than $5,000, agreement will require review by Purchasing contract specialist – Wendy Spargo.
  ◦ Or complete a speaker engagement letter, if $500 or more.
  ◦ THEN create a requisition in PeopleSoft
The New Process

• Step 5B: If the EIC form determines your worker should be an independent contractor...
  • A copy of the EIC form must be printed, signed, and submitted along with the speaker engagement/service agreement, or the form will be rejected
  • The description of work in the service agreement must agree to what was submitted on the EIC form or the agreement will be rejected
The New Process

• Once the Service Agreement is fully executed and purchase order is issued, you may then bring the service provider onboard as an independent contractor
The New Process

• If you have a worker who was previously categorized as an independent contractor who must now be categorized as an employee...
  • The final check request / invoice must be received by 12/12/18
  • Any payments made in calendar year 2019 must be made as employee
Frequently Asked Questions
FAQs

What if we’ve categorized this person as an independent contractor for years?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
FAQs

What if the worker has asked to be categorized as an independent contractor?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
FAQs

What if the worker is funded by grant money?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
FAQs

What if we don’t have money in the budget to pay the person as an employee?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
FAQs

What if the worker taught a class but only for a few weeks?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
FAQs

What if the worker wants to be paid as an independent contractor through their sole proprietorship?

It doesn’t matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!
Helpful Links

Procurement or Lease of Goods or Services
Service Contract / Speaker Agreement
Payroll & Tax Services
Purchasing Services
Disbursement Center
Employee vs. Independent Contractor Determination