The University of Vermont

OFFICE OF COMPLIANCE SERVICES
UVM.EDU/POLICIES

POLICY

Title: Employee vs. Independent Contractor

Policy Statement

In accordance with federal and state laws and regulations pertaining to the proper classification of individuals as independent contractors or employees, the University of Vermont must properly determine whether an individual providing services should be classified as an employee or as an independent contractor before any purchase requisitions are initiated or services are performed. This policy provides a standard process for making this determination and identifying appropriate supporting documentation.

Reason for the Policy

The University needs to ensure that it operates in compliance with federal and state laws and regulations governing the classification of individuals as employees or independent contractors. The consequences of misclassifying employees as independent contractors may include significant liabilities, including tax liabilities and penalties, criminal sanctions, and civil liability. Note that any taxes, interest, or penalties assessed against the University due to misclassification of an individual as an independent contractor may be charged back to the hiring department budget.

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.

Definitions

Employee vs. Independent Contractor Determination Form: An electronic form that helps members of the University of Vermont community determine the appropriate classification of an individual as an employee or independent contractor.

IRS Form W-9: Request for Taxpayer Identification Number and Certification: A W-9 form is used to provide a taxpayer identification number, name of the entity or individual on file with the IRS, and federal tax classification of the organization or business paying an individual or entity. A valid W-9 is prepared by the individual or entity and is signed (hand written or date stamped electroncially), dated and shows a federal tax classification.

Services Agreement: A contract between the University of Vermont and an individual or entity, for services being provided to the University. A Service Agreement is required to pay for services,

other than speaker engagements, in an amount of $1,000 or greater (including fees and expenses).

Speaker Engagement: A letter of agreement between the University of Vermont and an individual for a one-time engagement of a day or two (e.g., guest speaker, workshop leader). If the guest speaker engagement will result in a payment of $500 or greater (whether for honorarium/speaker fee, or travel expenses), this form is required. Virtual speaking engagements of any amount require a letter of agreement.

(The following definitions are included to inform departments on elements of the IRS W-9 form)

Doing Business As (DBA): A business name for an individual or entity, as registered with their state of operation. Even though an individual is using a DBA business name, they may still have a tax classification as an individual/sole proprietor, and therefore need further Employee versus Independent Contractor determination.

Employer Identification Number (EIN): A unique nine-digit number issued by the IRS that includes information about in which state the entity or sole proprietor is registered. The digits of an EIN are formatted as follows: XX-XXXXXXX. The IRS uses the EIN to identify taxpayers who are required to file various business tax returns. An EIN can be issued to a corporation, partnership, as well as to an individual.

Federal Tax Classification: Collected on a W-9 Form, provides information about how an individual or entity files their taxes with the IRS. This in turn informs the organization or business paying the individual or entity how to classify the supplier during set-up in the accounting system, how to correctly pay, and how to correctly report for tax purposes.

Limited Liability Company (LLC):

- May or may not be a corporation
- May or may not be an individual
- May or may not require issuing an IRS Form 1099
- May be a Single member LLC – needs Employee vs Independent Contractor determination, and may or may not be issued a IRS Form 1099
- May be a C Corp – no Employee vs Independent Contractor, will not be issued an IRS Form 1099
- May be an S Corp – no Employee vs Independent Contractor, will not be reported on IRS Form1099
- May be a Partnership – no Employee vs Independent Contractor, will be issued an IRS Form 1099.
- The University may require an LLC who indicates an entity type other than a sole proprietorship to provide an IRS determination letter confirming their status.

S Corporation: A Subchapter S (S Corporation) is a form of corporation that meets specific Internal Revenue Code requirements. The requirements give a corporation with 100 shareholders or fewer the benefit of incorporation while being taxed as a partnership. As an S Corp, there is no need for Employee vs Independent Contractor determination, nor will an IRS Form 1099 be issued.

Social Security Number (SSN): Identification number issued by the Social Security Administration to individuals only.

Sole Proprietor: Tax classification where income and losses are reported and taxed on an individual's personal income tax return. Therefore, the individual needs an Employee vs. Independent Contractor determination and will receive an IRS Form 1099 if classified as an Independent Contractor.

Taxpayer Identification Number (TIN): An identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued either by the Social Security Administration (SSA) or by the IRS. A Social Security number (SSN) is issued by the SSA whereas all other TINs are issued by the IRS.

Background – Independent Contractor vs Employee

Under federal and state laws and regulations, the University has a number of obligations relative to its employees, including meeting wage and hour obligations such as minimum wage and overtime pay; withholding applicable federal and state taxes from employee compensation; contributing to unemployment and workers' compensation insurance; and providing certain employee benefits, such as health insurance. The laws that govern these obligations generally presume that if the University is hiring an individual to perform services, the individual is an employee unless the following conditions are satisfied:

- The individual is free from control and direction by the University in connection with the performance of services. The University should direct only the result of the work, not the means and methods of accomplishing the result.
- The services are performed outside the usual course of the business of the University. Individuals who perform services that are a necessary component of the operation of the University, such as instruction and research, should be classified as employees.
- The individual is customarily engaged in an independently established trade, occupation, profession or business.

Procedures

Step 1: Determine whether the service provider is, or has been, a UVM employee.

The University's Employee vs. Independent Contractor Determination Form (EIC Form) helps members of the University community evaluate whether the service provider should be classified as an employee or an independent contractor. Contact the Disbursement Center at 802-656-4192 or email supplier@uvm.edu for confirmation of an approved supplier record in PeopleSoft for this individual.

The EIC form requires the unit to perform a web search for individuals under evaluation to confirm they are not presented as an employee on a University of Vermont web page. Such listings generally preclude the individual from being treated as an independent contractor. Similarly, individual service providers who are determined to be independent contractors under this policy may not use the University's name, logo or registered trademarks on their business web sites or social media without written consent.

The department or unit acquiring the services of an individual must accurately reflect and verify on the EIC Form whether the individual has been paid or reimbursed as an Employee in the current or previous calendar year. Obtaining confirmation of employment status from the Dean's level Human Resource Representative is required.

It is the policy of the University that any paid employment (i) in the *current* calendar year (including student employment, work-study employment and temporary employment) *precludes* the individual from being classified as an Independent Contractor of the University; and (ii) it is also the policy of the University that any paid employment in the *preceding* calendar year *presumptively precludes the individual from being classified as an* Independent Contractor of the University.

Step 2: Obtain a W-9 Form from the service provider.

If the service provider has not been paid or reimbursed as an Employee in the current or previous calendar year, the respective dean, director or chair (or *authorized* designee thereof) of the department or unit obtaining the individual's or entity's services must obtain a completed Form W-9 from the service provider if new to the University (as confirmed in Step 1). If the W-9 indicates that the individual is providing services either as an individual with a Social Security number or as a sole proprietor with a separate EIN number, completing Step 3 below is required. If the W-9 indicates that the service provider is any other type of taxable entity other than an individual or sole proprietor, no EIC form is needed. the W-9 must be obtained or confirmed in advance of drafting a service agreement to ensure that the supplier record and any related reporting is consistent with IRS records.

An alternative to obtaining the IRS W-9 form is using UVM's New Supplier W-9 Form. This form provides additional contact information and other important data not collected on the IRS W-9.

If the Individual Is a foreign national, a W-8Ben would be required Instead of a W-9

Step 3: Complete the Electronic Employee vs. Independent Contractor Determination (EIC) Form

Before contracting with an individual as an independent contractor, the department seeking to contract with the individual for services must complete the EIC Form. The EIC form will prompt answers to a variety of questions about the individual and should be completed by staff with sufficient knowledge of the individual and the proposed services.

Description of Services

The department or unit acquiring the services of an individual must accurately reflect and verify on the EIC form the nature of the services to be performed. The description of services should provide enough detail about the nature of the work to fully support the independent contractor classification. Details should include: (i) discrete tasks; (ii) specific deliverables; (iii) whether the individual will be supervising, or supervised by, UVM employees; (iv) UVM's level of control over the individual; and (v) the duration of the work.

Relationship with the University

Upon completion of the EIC form, a determination of "Employee" or "Independent Contractor" will be provided based on the responses to the questions posed. If the facts and circumstances of a given work situation appear to indicate an Employee-Employer Relationship, the University will require that the individual be hired as an Employee. If the EIC form indicates that the individual should be compensated as an Employee, payment for services rendered must be initiated through Human Resource Services and Payroll and Tax Services.

Departments or units that disagree with the final form determination, may contact Payroll & Tax Services. When particular circumstances warrant analysis outside of the form, the University's tax administrator may review the facts and circumstances and make a final determination in an alternate form.

> ***Note:*** Work performed by a service provider should not commence until a determination is made and any necessary documentation (such as a fully executed Services/Speaker Agreement, fully executed employment contract, etc.) is submitted to appropriate parties.

Step 4: Certification and Submission of EIC Form

The EIC form requires the name of the individual (payee); the unit/department; and the name, phone number, and email address of the preparer of the form. The EIC form must include a response as to whether the individual is a U.S. Citizen, Lawful Permanent Resident (a.k.a. Green Card Holder), or Foreign National.

> ***Note:*** If the individual is a Foreign National, initiate payment via Check Request, and submit to Tax and Payroll Services. Additional documentation will be required, pursuant to the *Check Request for Foreign Nationals Flow Chart*, which includes a summary of documentary requirements.

A completed EIC form supporting an Independent Contractor determination must be certified via signature by the unit or department's dean, director, chairperson, or authorized designee thereof (see Departmental Delegation of Authority Letter).

- Prior to commencement of any services by an individual who has been determined an Independent Contractor, the completed Electronic EIC Determination email must be signed, scanned and submitted along with, if applicable, a Services Agreement or Speaker Engagement letter following procedures on Purchasing Services' website. The determination email may be printed to PDF and signed electronically.
  - A purchase requisition for services by an individual will only be processed if a completed EIC form has been submitted that both (i) supports an Independent Contractor determination; and (ii) has been certified by the department or unit's dean, director, chair, or authorized designee with valid Delegation on file.
- A completed Departmental Delegation of Authority Letter must be kept on file in the requesting department for seven years and is subject to review for audit purposes.

Contacts

Questions concerning the daily operational interpretation of this policy should be directed to the following (in accordance with the policy elaboration and procedures):	
Title(s)/Department(s):	**Contact Information:**
Dean's Office Human Resource Representatives: (verification of existing & prior employment)	https://www.uvm.edu/hrs/contact
Human Resource Services: (verification of existing employment if no HR Rep is available) (assistance regarding employee classification)	HRSInfo@uvm.edu 802-656-3150
Payroll and Tax Services: (regarding EIC classification, or IRS Form SS-8 questions)	taxadmin@uvm.edu (802) 656-0674
Purchasing Services: (guidance on requisition or contract process)	purchasing@uvm.edu (802) 656-6610
Disbursement Center: (verification of supplier & W-9 questions)	disburse@uvm.edu (802) 656-4192

Forms/Flowcharts/Diagrams

- Check Request Form (for payments to Foreign Nationals)
- Employee vs. Independent Contractor Determination Form
- Delegation of Authority Letter
- New Supplier W-9 Form
- Services Agreement Template and Instructions

- Speaker Engagement Template and Instructions
- Virtual Speaker Engagement Template and Instructions

Related Documents/Policies

- Contract Approval and Signatory Authority Policy
- Payments to Foreign Nationals and Entities Policy

Regulatory Reference/Citations

- None

Training/Education

Members of the training audience are encouraged to attend training. Managers may make training mandatory for their direct reports. Slides from previous trainings are online.

Training Topic:	Employee vs. Independent Contractor Determination Training		
Training Audience:	Hiring Managers	**Delivered By:**	Division of Finance and Administration
Method of Delivery:	In-Person or virtual	**Frequency:**	As needed

About This Policy

Responsible Official:	Vice President for Finance and Administration	**Approval Authority:**	President
Policy Number:	V. 4.6.5	**Effective Date:**	February 25, 2019
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