



UNIVERSITY POLICY

SUBJECT: FINANCIAL AFFAIRS **TITLE:** INDEPENDENT CONTRACTOR GUIDELINES

CODING: 00-01-50-115:00 **ADOPTED:** 02/04/04 **AMENDED:** 02/04/04

I. PURPOSE

To document UMDNJ guidelines for classifying a worker as an Independent Contractor.

II. ACCOUNTABILITY

Under the direction of the Senior Vice President for Administration and Finance and Vice President for Human Resources, the University Controller shall implement and ensure compliance with this policy.

III. DEFINITION

- A. Independent Contractor, Personal Services: Individuals and not partnerships, firms or corporations, performing generally infrequent, technical or unique functions.
- B. Independent Contractor, Professional Services: Performed by independent contractors whose occupation is the rendering of such services and may include partnerships, firms or corporations as well as individuals.

IV. REFERENCE

Consultant Utilization [00-01-55-05:00](#)

V. POLICY

A. Requirements

1. An individual may only be retained for personal or professional services as an independent contractor if a determination has been made that an employer-employee relationship *does not* exist (see EXHIBIT A).
2. University purchasing procedures may not be used as an alternative to placing an individual on the payroll. As a general rule, individuals should be classified as independent contractors *on an exception basis only*.
3. Determination of Employee/Independent Contractor Status
 - a. If an employer has the right to *direct and control* the work of an individual who performs the services, not only as to the results to be accomplished, but also as to the methods and means by which the results are accomplished, an employer/employee relationship exists. In this respect, even if the employer does not exercise the right to direct or control the manner in which the worker performs the services, *the fact that the employer retains the right to do so is*

sufficient to classify the relationship as that of employer/employee.

- b If the individual is subject to the direction or control of another person only as to the end result, *not as to the methods and means used to accomplish that result*, the individual is not an employee. If the employer does not control either the manner of performance or the result of the service, an independent contractor relationship exists.

4. Engaging the Services of an Independent Contractor

- a. The engagement of an independent contractor or consultant for personal or professional services must be accomplished in accordance with the University policy, 00-01-55-05:00, Consultant Utilization.
- b. The determination of an individual's status as an employee or independent contractor must be made *prior to* engagement to perform personal or professional services. The determination must be made in accordance with the criteria contained in Section V.A.3.

B. Responsibilities

- 1. It is the responsibility of the originating office to determine the correct status of workers in accordance with the procedures and information outlined in this policy.
- 2. If a worker is deemed to be an independent contractor, the originating office is responsible for the submission of the **Independent Contractor Pre-Contract Worksheet** (EXHIBIT B) with the purchase requisition *prior to the performance of any services*.
- 3. The Office of the University Controller is responsible for the overall assessment and monitoring of compliance with the worker classification guideline outlined in this policy.
- 4. The originating department is responsible for all fines and penalties imposed by IRS for what they have deemed to be an incorrect classification of a worker.

VI. EXHIBITS

- A. Primary Factors to Determine If An Employer-Employee Relationship Exists
- B. INDEPENDENT CONTRACTOR PRE-CONTRACT WORKSHEET

By Direction of the President:

Senior Vice President for Administration and Finance

EXHIBIT A

Primary Factors to Determine If An Employer-Employee Relationship Exists

- A. The primary factors listed below include key facts that illustrate the right to *direct and control*, or its absence. Although every factor is not necessarily present in every case, generally an employer-employee relationship exists when a worker:
1. Must comply with the employer's **instructions** about when, where, and how to do the job. (The weight of "instructions" depends on the degree to which instructions apply to *how to get the job done* rather than to the *end result*. However, instructions imposed by the employer in compliance with governmental or governing body regulations should be given little weight. Instructions may be in the form of manuals or written procedures).
 2. Receives **training** from or at the direction of the employer. (Periodic or on-going training about procedures to be followed and methods to be used indicates that the employer wants the services performed in a particular manner and is strong evidence that an employer-employee relationship exists).
 3. Lacks a **significant investment** in facilities and equipment used to perform services. (A significant investment is evidence that an independent contractor relationship may exist; however it is not required for independent contractor status).
 4. Receives payments for business and/or traveling **expenses**. (Independent contractors are more likely to have unreimbursed expenses. In addition, the opportunity for profit or loss exists if expenses are unreimbursed).
 5. Does not offer **services** to the general public. (Any requirement that the individual work exclusively for one employer detracts from the argument that the worker is an independent contractor).
 6. Receives payments of regular amounts at set intervals. (Performance of a task for a flat fee is generally evidence of independent contractor status. **Payment by the hour, week, or month** usually indicates an employer-employee relationship).
 7. Cannot make a **profit** or suffer a **loss** from services. (The ability to realize a profit or incur a loss is probably the strongest evidence that a worker controls the business aspects of services rendered and is an independent contractor).
 8. Can be **terminated** by the employer. (Since employers rarely have complete flexibility in discharging an employee, the inability to discharge a worker, by itself, does not constitute sufficient evidence that the worker is an independent contractor).
 9. May quit work at any time without incurring liability. (The presence or absence of limits on a worker's ability to **terminate**, by itself, does not constitute sufficient evidence in determining a worker's status. On the other hand, an employer's ability to refuse payment for unsatisfactory work is characteristic of independent contractor status).
 10. Has a **continuing working relationship** with the employer. (The relationship is considered continuing, even if the services are rendered on a part-time basis, are seasonal in nature, or if the individual actually works for only a short time).

EXHIBIT A (continued)

11. Provides services that are **integrated into the business**, i.e., the success or continuation of the employer's business depend significantly on the performance of certain services that the worker provides.
 12. Provides services that must be rendered personally.
 13. Hires, supervises, and pays assistants on behalf of the employer, or if the employer hires, supervises, or pays assistants for the worker. (An independent contractor usually determines whether to hire assistants and, if so, whom to hire and what to pay them).
 14. Must do the work in a sequence set by the employer.
 15. Must submit regular oral or written reports to the employer. (If a contract between the employer and an independent contractor specifies that the job must be completed to the satisfaction of the customer, the employer may avoid the need for reports from the independent contractor. *Reports are usually an indication of employee status, since the worker must account for his or her actions*).
 16. Relies on the employer to furnish tools and materials.
 17. Works for only one employer at a time.
- B. In addition, because recent court decisions have given the following factors little weight, the IRS now considers them to be less important in determining a worker's status:
1. Must follow set hours of work.
 2. Works full-time for the employer.
 3. Does the work on the employer's premises, or on a route or at a location designated by the employer.
- C. The following factors also are relevant in determining a worker's status:
1. A written contract or agreement describing the worker as an independent contractor has been viewed by the courts as evidence of the parties intent concerning control.
 2. An individual who creates a corporation, through which to perform services will generally be considered an employee of the corporation for Federal tax purposes, provided corporate formalities are properly followed.
 3. If a worker receives employee benefits, such as paid vacation days, paid sick days, health insurance, life or disability insurance, or a pension, this constitutes some evidence of employee status.

The IRS also takes the position that if two individuals have the same job description or job title, e.g., both are professors but one works full-time and one works part-time, both should be considered employees.

EXHIBIT B

INDEPENDENT CONTRACTOR PRE-CONTRACT WORKSHEET

INFORMATION ABOUT INDIVIDUAL

Sole Proprietor _____ Partnership _____ Corporation _____

Social Security Number _____ Federal ID Number _____

Name _____ Name of Company _____

Campus _____ Unit/Department _____

If Foreign National – Country _____ Visa Type _____

MULTIPLE RELATIONSHIPS WITH THE UNIVERSITY

1. Is this individual on record as a current employee? Yes ___ No ___

If no, is it expected that the University will hire this individual as an employee following the termination of this service? Yes ___ No ___

2. Was the individual a University employee any time during the last year and did he or she provide the same or similar services while an employee? Yes ___ No ___

IRS CLASSIFICATION FACTORS

Before a worker is hired as an independent contractor, the following checklist *must* be completed to help determine whether an employer/employee relationship exists.

IRS Classification Factors

Yes =
Employee No =
Contractor

Behavioral Control: Right to direct and control details and means by which worker performs services.

1. **Instructions.** Will the University have the right to give the worker instructions about when, where, and how he or she is to do the job?

2. **Training.** Will the worker receive training from the University?

Financial Control: Right to direct and control economic aspects of the worker's activities.

1. **Significant Investment.** Has the worker failed to invest in facilities (such as an office) used to perform services?

2. **Payment of Expenses.** Will the University pay the worker's business or travel expenses?

EXHIBIT B (continued)

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|---|--------------------------|--|--------------------------|
| 3. Services Available. Does the worker not make his or her services available to other employers? | <input type="checkbox"/> | | <input type="checkbox"/> |
| 4. Payment by Hour, Week, Month. Will the University pay the worker by the hour, week, or month rather than by commission or by the job? | <input type="checkbox"/> | | <input type="checkbox"/> |
| 5. Realization of Profit or Loss. Will the arrangement prevent the worker from realizing a profit or suffering a loss? | <input type="checkbox"/> | | <input type="checkbox"/> |

Relationship of Parties: Intent of parties concerning status and control of worker.

- | | | | |
|--|--------------------------|--|--------------------------|
| 1. Right to Terminate. Could the University terminate the worker at any time without incurring liability? | <input type="checkbox"/> | | <input type="checkbox"/> |
| 2. Regular Business Activity. Is the work to be performed part of the regular business of the University, such as teaching or research? | <input type="checkbox"/> | | <input type="checkbox"/> |
| 3. Written Contract. Will a written contract not be executed describing the worker as an independent contractor? | <input type="checkbox"/> | | <input type="checkbox"/> |
| 4. Employee Benefits. Will the worker receive any employee benefits? | <input type="checkbox"/> | | <input type="checkbox"/> |

EVALUATION OF CLASSIFICATION FACTORS

Areas That Support Employee Status

(Use separate sheet, if necessary.)

Areas That Support Contractor Status

DETERMINATION

Hire worker as an employee

Hire worker as an independent contractor

Prepared By _____

Date _____

 Department Authorization

 Title

 Business Manager Authorization

 Title

 Date