

## INDEPENDENT CONTRACTORS

Although a majority of the University's business activities are performed by its employees, certain circumstances warrant the hiring of independent contractors to accomplish one or more tasks. In these instances, it is critical that a careful analysis be conducted in order to determine whether the service provider is in fact an independent contractor as opposed to an employee. It is the responsibility of the department engaging a service provider to contact [Accounts Payable](#) or [University Tax Services](#) prior to the engagement or performance of service if they are unsure as to the correct classification of a service provider.

The purpose of this information is to assist the University community in properly classifying a service provider as either an employee or independent contractor based on the facts and circumstances of a given situation. The difference is important as the two have different tax implications.

- **Employee:** If a worker is classified as an "employee" of the University, then payment for service is considered wages or compensation and the employer is responsible for withholding income taxes and the employee's portion of social security and Medicare taxes. In addition, the University is also responsible for paying its portion of social security and Medicare taxes on the wages paid to the employee. The University is also responsible for annually reporting compensation amounts on IRS Form W-2.
- **Independent Contractor:** If a worker is considered an "independent contractor", then the worker assumes all responsibility for the income and employment tax implications which arise from the payment for services. In addition, the University may be responsible for annually reporting all payments for service on IRS Form 1099-MISC.

**Classifying:** Due to the above withholding, payment and reporting differences, the IRS has strict guidelines for determining who can be paid as an independent contractor and who must be paid as an employee. When making a determination between employee and independent contractor, the IRS has indicated that the following three factors must be considered:

- (1) Behavioral Control,
- (2) Financial Control, and
- (3) Nature of the relationship between the parties.

- **Behavioral Control:** Behavioral control determines who has the right to direct or control how the work is done. A worker would be considered an employee when the University has the right to control how the worker performs their services. Additionally, if training is provided by the University regarding required procedures and methods for performing the work, this would indicate that the University controls the manner in which the work is performed. Under this concept, the greater the amount of control the University possesses over the specific work, the more likely the worker will be viewed as an employee of the University by the IRS.

For example, if a person is asked to cut the grass of the quad and is given only the height to which the grass should be cut, they are likely to be viewed as an independent contractor, as the concern is only with the end product. However, if a person is asked to wear a DePaul uniform, use a DePaul owned mower, and told a specific time for when the grass should be cut, the person is likely to be viewed as an employee, as the University would be seen as controlling how the work is to be performed.

- **Financial Control:** Financial control factors look at the worker's or University's ability to control the business aspects of the job. These include the need for reimbursement of business expenses, the worker's ability to make his or her services available to the general public, the worker's investment in its own tools and instruments necessary to perform services, or the extent to which the worker can realize a profit or loss.

For example, a worker discovers a cheaper way of performing the services he provides, if the money saved is recognized as a personal profit, the worker is likely an independent contractor; however, if the savings realized from the reduced costs are recognized by the University, the worker is likely to be considered an employee.

- **Relationship between the Parties:** This factor looks at the manner in which the worker and the company perceive their relationship. The goal is to honor the intent of the two parties in engaging in the relationship. Important aspects to think about when considering relationship factors include whether there is a written contract between the parties, whether the worker is receiving benefits such as health coverage, whether

services provided by the worker are key activities of the university, or whether the work performed can result in non-payment in the event of dissatisfaction.

For example, if an employee unsatisfactorily cut the grass in the quad, the University would still be required to compensate the employee for the work. On the contrary, if an independent contractor unsatisfactorily cut the grass, the University could potentially withhold payment for the worker's services until performed in a satisfactory manner.

In addition to the above information, the following tools are also available to assist departments in making a correct classification:

- [IRS Twenty Factors](#): this document lists twenty factors that the IRS believes are important to consider when making a correct classification.
- [Independent Consultant vs. Employee Situations](#): this document lists situations that have a high likelihood of worker misclassification.

**Consequences of Worker Misclassification:** The risks to the University in misclassifying service providers includes penalties and interest imposed by the IRS on under-withheld amounts, along with additional FICA taxes on amounts paid to service providers reclassified as employees by the IRS.

**Determination:** It should be pointed out that no one set of factors is more important than another and that all of the facts and circumstances of a situation should be considered when making a classification. When making the determination between Employee and Independent Contractor, it is recommended that the department engaging the service provider completes the [Employee/Independent Contractor Questionnaire](#) and forwards it to the University Tax Services for assistance in this determination.

**Tax Documentation:** Independent Contractors are required to complete and sign University tax documentation *prior* to the engagement, or performance of service. Those independent contractors who do not provide proper tax documentation will be subject to applicable withholding. Please consult the Accounts Payable website for more information regarding required tax documentation for [vendors and services providers](#).

Independent contractors who are nonresident aliens for tax purposes should complete and submit [International Information Form](#) along with additional documents to Accounts Payable. Those nonresident aliens who do not provide proper tax documentation may be subject to additional withholding requirements. Please refer to [Payments to Non-US persons](#) portion of the Accounts Payable website for additional information.

**DePaul Policy and Procedures:** Please visit the University's [Use of Independent Contractors/Consultants](#) policy for more information regarding the use of independent contractors. Additionally, please consult the Accounts Payable website for important information regarding the necessary procedures relating to [Professional Service Payments](#), and [Honorarium Payments](#).

For any questions or assistance with the classification of a service provider please contact [University Tax Services](#).