

Differences between Employee & Independent Contractor

The proper classification of individuals as employees or independent contractors is important because errors can lead to severe penalties. An [Independent Contractor Check List](#), which is available on the NU Values website, under the 'Compensation' section, has been prepared to help you classify these individuals. While the Check List is intended to be the primary decision making tool, the following information will help you understand the regulations regarding the employee vs. independent contractor classification.

The general rule of thumb is that an individual is an independent contractor if the University has the legal right to control or direct only the result of the work and not the means and methods of performance. These individuals usually identify themselves as self employed and make themselves available to the public for such services. To determine if an individual is an employee or an independent contractor under common law, the relationship of the worker and the University must be examined. In any employee-independent contractor determination, information that provides evidence of the degree of control and the degree of independence must be considered. Facts that provide evidence for this criteria fall into the following three categories: Behavioral Control, Financial Control, and Type of Relationship. It is important to consider all the facts as no single fact determines independent contractor status.

Behavioral Control

Criteria that show if the University has the right to direct what the worker does and how the worker does the task for which they are hired. This includes the amount of instructions and training the worker receives from the University.

Instructions: An employee is generally subject to the University's instructions about when, where and how to do the work.

- When and where to do the work
- What tools or equipment to use
- What workers to hire to assist with the work
- Where to purchase supplies and services
- Type of work to be performed by each worker
- What order or sequences to follow

In some cases very little or no instructions are given, but sufficient behavioral control may exist if the University has the right to control how and when the work results are achieved. The key factor is whether the University has retained the right to control the details of the worker's performance or instead has given up that right.

Training: If the University provides the worker with training regarding required procedures and methods, this indicates the University wants the work done in a certain way and the worker is generally considered an employee. Independent contractors will ordinarily use their own expertise and methods.

Financial Control

Facts that show if the University has a right to direct or control the business aspects of the worker's performance, such as how the worker is paid, who provides supplies, and if expenses are to be reimbursed. Factors to consider in regard to financial control are:

- Extent of Investment: An independent contractor often has a significant investment in the facilities and tools they use in their performance of work for others. However, a significant investment is not necessary for independent contractor status.

- Business expenses: Independent contractors are more likely to incur expenses related to the service performed that are not reimbursed by the University than are expenses incurred by employees. Fixed ongoing costs that are incurred by the contractor regardless if any work is being performed are especially important in determining status. However, employees may also incur expenses in connection with the services being performed that are not reimbursed.
- Availability: An independent contractor is generally free to seek business in the open market. They often advertise, maintain a business location and are available to work for the public.
- Payment: An employee is generally guaranteed a regular wage amount for hourly, weekly or monthly periods of time, which usually is an indicator that a worker is an employee even though commissions may supplement their pay. An independent contractor is usually paid by a flat fee for a certain job, but can be paid on an hourly basis in some situations such as for attorneys and accountants.
- Profit or loss: An independent contractor realizes a profit or a loss while an employee does not.

Type of Relationship

Facts that show the type of relationship are:

- Contracts: Written contracts that describe the relationship's intent. This is very significant if the relationship is very difficult to determine.
- Benefits: If the worker is paid benefits such as insurance, pension or paid leave by the University this is an indication this person is an employee. If they do not receive benefits this does not mean they cannot be classified as an employee.
- Permanency of relationship: If a worker is engaged by the University with the expectations the relationship will continue indefinitely, rather than for a specific project or period, this is generally evidence of intent to create an employer-employee relationship.
- Key Aspect of the Business: If the worker provides services that relate to the daily business activity, then the University will be more likely to have the right to direct and control and would indicate an employer-employee relationship.

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. No one factor stands alone in making this determination.

The keys in determining the appropriate classification are to look at the entire relationship, consider the degree or extent of the right to direct and control, and to document each of the factors used in coming up with the determination.

For more assistance in appropriately classifying workers as employees or independent contractors, please contact one of the following Compensation Consultants in HR Staffing & Compensation:

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