

Employee versus Independent Contractor Guidelines

Before you can know how to treat payments that you make to individuals for services, you must first know the business relationship that exists between you and the person performing the service(s). The person performing the service(s) may be either an employee or an independent contractor. These guidelines (adapted from IRS Publication 15-A, [Employer's Supplemental Tax Guide](#)), explain these two categories and focus on the differences between an independent contractor and an employee.

1. Who is an Employee?

Anyone who performs services for you is your employee **if you can control what will be done and how it will be done**. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

If you have an employer-employee relationship, it makes no difference how it is labeled. The substance of the relationship, not the label, governs the worker's status. Nor does it matter whether the individual is employed full time or part time.

To determine whether an individual is an employee or independent contractor, the relationship of the worker and the University must be examined. All evidence of control and independence must be considered. In an employee-independent contractor determination, all information that provides evidence of the degree of control and degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control and the type of relationship of the parties. Refer to IRS Publication 15-A, [Employer's Supplemental Tax Guide](#), for additional information or use the checklist on the second page of these guidelines to help you determine whether you should pay an individual as an employee or independent contractor.

2. Who is an Independent Contractor?

Some people who follow an independent trade, business or profession in which they offer their services to the public are not paid employees. However, whether such people are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if the department for whom the services are performed **has the right to control or direct only the result of the work and not the means and methods of accomplishing the result**.

VCU does not allow current employees to be paid as independent contractors. If payment for services beyond the current job assignment is necessary, it typically will be treated as an overload job (contact your [Human Resources Consultant](#) if you need assistance).

Typically, VCU treats the following providers of services/products as independent contractors when provided by non-employees:

- Architectural/Engineering Services
- Artwork
- Athletic Official (at games)
- Caterer
- Construction Contractor
- Disc Jockey
- Entertainer, Actor, Talent (public event, theater or musical production)
- Guest Speaker (one-time)
- Musical Instrument Tuner/Repair (i.e., piano tuner, etc.)
- Translator: Foreign Language
- Translator: Deaf
- Writer (scholarly publications or VCU magazine)

Refer to IRS Publication 15-A, [Employer's Supplemental Tax Guide](#), for additional information or use the checklist on the second page of these guidelines to help you determine whether you should pay an individual as an employee or independent contractor.

3. Employee or Independent Contractor?

To determine whether an individual is an employee or an independent contractor, the relationship of the worker and the university must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control and the type of relationship of the parties.

Refer to IRS Publication 15-A, [Employer's Supplemental Tax Guide](#), for additional information or use the checklist on the second page of these guidelines to help you determine whether you should pay an individual as an employee or independent contractor.

Notes:

- **Non-Employees and Employees:** For information concerning these types of payments, see Summary of Payment Methods for Employees and Non-Employees.
- **Research/Survey Participant:** Payment of fees for research human subjects or surveys is made through direct pay, petty cash or gift cards. For more information, see <https://procurement.vcu.edu/i-want-to-pay-an-individual/compensate-a-research-participant/>.
- **Honorariums:** See <https://procurement.vcu.edu/i-want-to-pay-an-individual/give-an-honorarium/>.

Employee versus Independent Contractor Checklist

Adapted from IRS Publication 15-A, [Employer's Supplemental Tax Guide](#)

INSTRUCTIONS: The general rule is that an individual is an independent contractor if the department for whom the services are performed **has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.** Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control and the type of relationship of the parties. The checklist below can help determine whether a non-employee should be treated as an Independent Contractor or Employee. After answering the questions below, consult with your department's Human Resource Consultant to determine how an individual should best be categorized.

| Behavioral Control (Check all that apply) | Yes - Employee | No - Independent Contractor |
|---|--|--|
| 1. Will you provide instruction about when, where and how the work is to done? | <input type="checkbox"/> Complies with the unit's instructions | <input type="checkbox"/> Determines own schedules, location and tasks |
| 2. Will you provide training to the individual? | <input type="checkbox"/> Trained by VCU | <input type="checkbox"/> Responsible for own training |
| 3. Will you require the individual to perform the service(s) personally? | <input type="checkbox"/> Must be performed personally | <input type="checkbox"/> Can be performed by his/her employees or subcontractors |
| 4. Will VCU establish the hours of work? | <input type="checkbox"/> VCU sets the hours | <input type="checkbox"/> Responsible for his/her own schedule |
| 5. Will VCU require the service(s) full-time during the duration of the contract? | <input type="checkbox"/> VCU requires full-time commitment | <input type="checkbox"/> Can work for others during period of the contract |
| 6. Will the work be performed on VCU's premises? | <input type="checkbox"/> Performed at VCU | <input type="checkbox"/> Performs service(s) at the individual's place of business |
| 7. Will VCU require progress reports on a regular basis? | <input type="checkbox"/> VCU requires reports | <input type="checkbox"/> Reports are not required unless stipulated in contract |

| Financial Control (Check all that apply) | Yes - Employee | No - Independent Contractor |
|--|--|---|
| 8. Will the contract be based on hourly, weekly or monthly rate? | <input type="checkbox"/> VCU pays on an hourly, weekly or monthly basis | <input type="checkbox"/> VCU pays per project |
| 9. Will VCU pay the worker's business and/or traveling expenses? | <input type="checkbox"/> VCU pays the business and traveling expenses | <input type="checkbox"/> Responsible for all expenses and can maximize profit by managing costs |
| 10. Will VCU furnish equipment, materials, tools and/or supplies? | <input type="checkbox"/> VCU furnishes equipment, materials, tools and/or supplies | <input type="checkbox"/> Individual furnishes everything |
| 11. Will the service provider use VCU or his/her own home as a business workplace? | <input type="checkbox"/> Works at VCU or at home | <input type="checkbox"/> Rents office space at fair market value from an unrelated party and/or has employees as a workforce for his/her projects; has significant investment in business |

| Relationship (Check all that apply) | Yes - Employee | No - Independent Contractor |
|---|---|--|
| 12. Does the service provider work for one firm at a time? | <input type="checkbox"/> Works for only one firm at a time | <input type="checkbox"/> Performs services for multiple unrelated customers at the same time |
| 13. Does the service provider make his/her service(s) known to the public primarily through word of mouth? | <input type="checkbox"/> Makes his/her services known by word of mouth | <input type="checkbox"/> Advertises his/her business in publications, yellow pages, web, etc. |
| 14. Does VCU have the right to discharge the worker? | <input type="checkbox"/> VCU has the right to discharge | <input type="checkbox"/> Cannot be fired if he/she produces a result based on the specifications of the contract |
| 15. Does the individual have the right to end his/her relationship with VCU at any time without incurring liability? | <input type="checkbox"/> The individual can terminate relationship with VCU at any time | <input type="checkbox"/> The service provider incurs liability for non-delivery |
| 16. Does VCU anticipate a continuing relationship? | <input type="checkbox"/> VCU anticipates a continuing relationship | <input type="checkbox"/> A continuing relationship is not anticipated; projects will be awarded only when the need arises and will be based on bids and specifications |
| 17. Will you integrate the worker's service(s) into your daily operations by providing email, an office and requiring attendance at meetings? | <input type="checkbox"/> Integrated into unit | <input type="checkbox"/> Independent of unit activities |

Notes:

- VCU does not allow current employees to be paid as independent contractors. If payment for services beyond the current job assignment is necessary, it typically will be treated as an overload job. Contact your Human Resource Consultant if you need assistance.
- VCU may hold departments financially responsible for any taxes, interest or penalties that the IRS or other regulatory bodies might assess due to misclassification.