

# **Independent Contractor Policies & Procedures**



## **Establishing Employment Relationships Independent Contractor or University Employee**

Employment is the normal means to engage and compensate an individual for providing any sort of service or work product for the University. Another format is through an independent contractor status, which is a very specific and limited form of 'contract for services' relationship. Institutional compliance with several federal and state guidelines pertaining to employment relationships is mandatory. The following policy must be recognized and followed by employing departments to properly establish and verify that employment relationships are consistent with federal and state regulations.

It is important that the university pay each individual appropriately so that we can accurately report earnings to the Internal Revenue Service. The Internal Revenue Service scrutinizes the returns of individuals who receive both a W-2 (employee record of earnings) and a form 1099 (independent contractor record of payment) for the same calendar year from one employer. They also scrutinize the returns of individuals who received a W-2 for a prior year and then receive a Form 1099 for the next calendar year from the same employer. Therefore, if an employing department hires an individual to perform a service or work product and that individual is a current employee or has previously been employed by Northern Illinois University within the past two years, then that individual must be paid through the standard payroll process as an employee of the University.

The IRS has provided a list of 20 common law factors to assist in determining whether the individual is an employee or an Independent Contractor. The essence of these 20 factors is summarized in the following four questions:

- Does this individual provide essentially the same service as an employee of the University?
- Has the individual previously been paid as a University employee to perform essentially these same tasks?
- Does the University have a right to control how, where, and when the individual will perform or accomplish the service?
- Will the individual supervise or direct University employees as part of the service provided?

If the answer to any of these four questions is yes, then the individual is considered to be an employee and must be paid through the HRS Payroll process.

If you are using a standard engagement agreement or whenever contracting for services that establishes the terms and conditions for a service-related contract for an individual, you must first make sure that the individual can be paid as an independent contractor. Please refer to the **Independent Contractor Questionnaire** to assist in determining whether an individual might qualify to be considered as an independent contractor. The Independent Contractor Questionnaire incorporates the twenty common law factors in an easy yes/no question format, affording a thorough review of the employment relationship resulting in an appropriate designation of either independent contractor or employee status. If a work for hire situation does not qualify to be considered as an independent contractor, then the individual must be employed as a university employee and paid through the standard payroll process. This will be the usual outcome. Please remember that in most cases a current or former employee will not qualify as an independent contractor.

Beginning May 1, 2002, employing departments must complete a **Certified Work Statement** for each service-related contract for any individual, prior to the performance of the service. These completed forms must be attached to any standard engagement agreement/contract used and sent with the requisition to Procurement Services or the check request to Accounts Payable for their review and signature. This will insure our compliance with all regulatory standards in this regard. The Certified Work Statement is the official result of the Independent Contractor Questionnaire and authorizes either Procurement Services or Accounts Payable to complete the payment processing. Check requests or requisitions not accompanied by a Certified Work Statement will be forwarded to Human Resource Services for their review and analysis of the assignment and employment relationship, thereby possibly delaying finalization of the defined work assignment or service.

There are penalties for misclassifying an individual service provider. Employers are legally required to pay Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), and Federal/State withholding taxes on the wages of workers classified as employees. If the Individual is classified as an Independent Contractor, the employer is not responsible for employment-related taxes. Non-employee compensation is reported on Form 1099 to the IRS. If an individual provider is determined by the IRS to be an employee instead of an independent contractor, the employer is responsible for paying any taxes that should have been withheld but were not, including Federal income tax, Social Security tax (both the employer's and the employee's share), and Medicare taxes, plus interest and penalties.

Under IRC Section 6651(a), the civil penalty for failure to file is 5% for each month, or a part of a month of delay, not to exceed 25% in the aggregate. If the failure to file a return extends for more than 60 days, the penalty for failure to file may not be less than the smallest of \$100 or 100% of the tax due. Therefore, if the University fails to file the requisite forms for individuals who should have been classified as employees, a civil penalty will be assessed against the University. **The initiating department will be responsible for the payment of any penalties or back taxes.**

Please note that this policy pertains specifically to individuals who are employed or contracted to perform a service or work product for the University. This policy does not apply to employing departments seeking reimbursement for employee expenses considered ineligible under other University policies.

**Questions** about determining Independent Contractor status should be directed to Al Mueller, Human Resources at 753-6045, Ken Mundy, Payroll Manager, at 753-6042, Keith Jackson, Controller at 753-8416, or Norden Gilbert, University Counsel at 753-8365.

4/1/02



# HUMAN RESOURCE SERVICES

NORTHERN ILLINOIS UNIVERSITY

## MEMORANDUM

**TO:** Vice Presidents, Deans, Directors, Department Heads,  
Business Managers and Department Secretaries

**FROM:** Steve Cunningham, Associate Vice President  
Administration and Human Resources

Keith Jackson,  
Controller

**DATE:** September 20, 2002

**RE:** **Independent Contractors - Revised**

In Spring 2002, the University adopted a new Independent Contractor procedure. As is the case with many new procedural implementations, a need for review and updating is essential. Feedback from the university on the operational impact of this procedure has prompted the following revisions. Please note that there is no change in the basic procedure; Independent Contractor relationships still need to be supported by the Independent Contractor Questionnaire and relationships that do not qualify must be paid through the Human Resource Services (HRS) payroll process.

The procedural changes are highlighted below.

- **Elimination of the Two-Year Period for Previous Employees**  
The intent of this procedure was to protect the university and the individual employee from audit exposure for receiving both a W-2 and a 1099 from the same entity in the same tax year. The requirement to be paid through the HRS payroll process is now only for active employees.
- **Elimination of the Definition of Student as an Employee**  
The original procedure treated all students or former students as potential employees, and required processing payment via the HRS payroll process. The new procedure will require payment through payroll only if the student is an active employee.

The current status of an employee can be determined by using the Employee Lookup located on the HRS web-site (<http://www.hr.niu.edu/peoplesoft/tools/index.cfm>).

SC/bjr

Attachments

Via e-mail

cc: Norden Gilbert  
Keith Jackson  
Kathe Shinham  
HRS Staff

## Independent Contractor Questionnaire

This questionnaire must be completed **before** any service is performed to determine if an individual is eligible to be an independent contractor. Results of the evaluation of information contained on this questionnaire should be kept as a source document to verify any independent contractor relationship. If it is determined that the individual qualifies as an independent contractor, please complete the **Certified Work Statement** signed by the Independent Contractor after the work has been completed. The **Certified Work Statement** must be submitted to Procurement/Accounting Office with the requisition/check request for the contracted services.

If it is determined that the individual should be paid as an employee, please prepare the required paperwork to have the individual employed in a position and processed through the appropriate HRS Payroll procedures. If necessary, please contact Human Resource Services (HRS) for clarification of these employment protocols.

**A) Please begin by providing the following information concerning the individual providing the service to be rendered.**

Name of individual/business: \_\_\_\_\_

Social Security Number or Federal Identification Number: \_\_\_\_\_

Business License Number: \_\_\_\_\_

Description of Services to be Performed: \_\_\_\_\_

\_\_\_\_\_

Amount/Time Period of Services: \_\_\_\_\_

**B) Please answer the following questions to assist in determining independent contractor or employee status.**

1) Is this individual currently employed by Northern Illinois University? **YES NO**

2) If the individual was previously an employee of the University, were the work requirements of the old position similar to the new position? **YES NO**

If the answer is "YES" to either of the questions above, this individual must be paid as an employee through the HRS Payroll process. Please submit the appropriate forms to HRS to facilitate the payment for these services at the next available payroll cycle.

If the answer to all of the questions above is "No", continue with the survey below.

- C) Below is a series of questions and brief explanations, as suggested by the IRS (Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, <http://www.irs.gov/pub/irs-pdf/fss8.pdf>), to further assist in determining whether the individual is an employee or an independent contractor. If the majority of answers to questions 1-20 are yes, then the relationship is that of an employer-employee rather than an independent contractor and the payment must be processed through the appropriate HRS Payroll procedures.

**1) Instructions**

Will you instruct the individual (or have the right to instruct) on when, where, and how the work will be done? YES NO  
*An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.*

**2) Training**

Will you train or provide training to the individual on performing services in a particular manner? YES NO  
*An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchaser of their services.*

**3) Integration**

Are the services this individual will be providing a part of the business operations? YES NO  
*An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.*

**4) Services Rendered Personally**

Will the individual be personally performing the services? YES NO  
*An employee renders services personally. This shows that the employer is interested in the methods as well as the results.*

**5) Hiring Assistant**

Will you be hiring, supervising, and paying others to assist the individual? YES NO  
*An employee works for an employer who hires, supervises and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor, and to be responsible only for the result.*

**6) Continuing Relationship**

Will this be an ongoing relationship? YES NO

*An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.*

**7) Set hours of work**

Will you be setting the individual's hours of work? YES NO

*An employee has set hours of work established by an employer. An independent contractor is the master of his/her own time.*

**8) Full-time work**

Will the individual be working only for you? YES NO

*An employee normally works full time for an employer. An independent contractor can work when and for whom he/she chooses.*

**9) Work Done on Premises**

Will the individual work on the premises or at a location you designate? YES NO

*An employee works on the premises of an employer, or works on a route or at a location designated by an employer.*

**10) Order or Sequence Set**

Will you define the order or sequencing of the work? YES NO

*An employee must perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.*

**11) Reports**

Will the individual be asked or required to submit a report to you describing his/her actions? YES NO

*An employee submits reports to an employer. This shows that the employee must account to the employer for his/her actions.*

**12) Payments**

Will you be paying the individual by the hour, week or month? YES NO

*An employee is paid by the hour, week or month. An independent contractor is paid by the job or on a straight commission.*

**13) Expenses**

Will you be paying any expenses for the individual? YES NO

*An employee's business and travel expenses are paid by an employer. This shows the employee is subject to regulation and control.*

**14) Tools and Materials**

Will you be furnishing the individual with tools, materials, equipment, etc? YES NO

*An employee is furnished significant tools, materials, and other equipment by an employer.*

**15) Investment**

Will the University provide the space/facilities to be used in performing these services? YES NO

*An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else.*

**16) Profit and Loss**

Is the University the only party to realize a profit or loss associated with the service to be provided? YES NO

*Independent contractor can make a profit or suffer a loss.*

**17) Works for More Than One Person or Firm**

Does the contractor provide services to only NIU? YES NO

*Independent contractor provides his/her services to two or more unrelated persons or firms at the same time.*

**18) Offers Services to General Public**

Is the general public limited in their access to the services provided? YES NO

*An independent contractor makes his/her services available to the general public.*

**19) Right to Fire**

Can you discharge the individual? YES NO

*An employee can be fired by an employer. An independent contractor cannot be fired so long as he/she produces a result that meets the specifications of the contract.*

**20) Right to Quit**

Can the individual terminate the relationship at any time without penalty? YES NO

*An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.*

**If the majority of answers to questions 1-20 are yes, then the relationship is that of an employer-employee rather than an independent contractor and the payment must be processed through the appropriate HRS Payroll procedures.**

Signature of Individual Completing Form: \_\_\_\_\_

Title of Individual Completing Form: \_\_\_\_\_

Date: \_\_\_\_\_

Department: \_\_\_\_\_

Account/Budget: \_\_\_\_\_