

BUSINESS POLICY LETTER

TO: All Members of the University Community

2003:21

DATE: June 1, 2004

Employee or Independent Contractors

DETERMINING EMPLOYMENT STATUS

Ferris State University must comply with Internal Revenue Service (IRS) regulations in our role as an employer. One of our responsibilities is the accurate categorization of workers as either employees or as independent contractors "IC", with the corresponding tax withholding and reporting functions inherent in either category of worker. Categorizing a worker as an IC exposes the University to the greatest amount of risk since the IRS assumes that all workers are employees unless it can be documented otherwise. Failure to properly classify individuals can result in assessments of taxes, penalties and interest.

A. What is an employee?

1. Essentially, all individuals performing services for the University, for which they will be compensated, are presumed to be employees unless he/she meets the criteria of independent contractor (IC) status discussed in item B. below.
2. Generally, current employees who perform additional services where he/she will be compensated in addition to their regular duties will be classified as an employee. (For exception, see B. 2. e)
3. Anyone teaching credit or non-credit courses offered by the University to the public will be classified as an employee.
4. Anyone currently enrolled, as a University student will be classified as an employee if they work for the University.
5. The following Internal Revenue Service (IRS) tests provide additional guidance on employee status:
 1. Does the employee receive instructions on how the job is completed? (IC do not receive instructions)
 2. Does the employee receive training for job? (IC do not receive training)

3. Are the employee's services integrated into the business operations?
4. Are the services rendered personally? (IC can provide other employees to complete assignment)
5. Does the employee work with assistants? (IC hire, fire and pay for their own assistants)
6. Is there a continuing relationship with the employer? (IC do not have a continuing relationship)
7. Does the employee have set hours? (IC sets and controls their own hours)
8. Is the work considered full time?
9. Is the work completed on the University's property? (IC can complete the work any place they desire)
10. Is the work completed in a sequence set by the University? (IC have control over how a result is to be accomplished)
11. Does the University require regular or written reports?
12. Is the employee paid by time rather than by the project? (IC are typically paid by the job and not by time worked)
13. Is the employee reimbursed for expenses? Ex: Reimbursement for travel. (IC are paid by the job and generally not reimbursed for expenses)
14. Does the University supply tools and materials? (IC normally provide their own tools and materials)
15. Does the individual have an investment in the facilities they are using? (IC has a significant investment)
16. Can the individual realize a profit or loss?
17. Does the individual work for more than one firm at a time? (IC is free to work for more than one firm at a time.)
18. Does the individual make their services available to the general public? (IC make their services available to the general public)
19. Does the University have the right to discharge the individual? (IC can only be terminated for failure to comply with the terms of the agreement)
20. Does the individual have the right to quit the job? (IC has a liability to complete the project to the satisfaction of the University in accordance with the contract or agreement)

The above questions are designed to determine who exercises control over the individual. If the University has the legal right to control both the method and the result as to **where, when, who and how** the work is to be performed, then the individual should generally be classified as an employee.

Another determining factor is who is carrying the worker's compensation insurance? Most IC's carry their own worker's compensation insurance policy and should provide the University with a certificate of insurance before the work is completed.

An employee is paid through payroll with the appropriate taxes withheld and they will receive a W-2 at the end of the calendar year.

B. Independent Contractors (IC)

1. The general rule of thumb is that an individual is an independent contractor (IC) if the University has the **legal right** to control or direct **only** the results of the work but not the means and method used in accomplishing the result. Generally, IC's hold themselves out in their own names as self-employed and make their services available to the public. Also, IC's carry their own worker's compensation insurance policy and should provide a certificate of insurance.
2. Examples of individuals who might be considered for IC status:
 - a. Guest performers or artists who are not employees of the University.
 - b. Guest speakers or lecturers brought to the University for a short duration (one or two days) because of their expertise.
 - c. Individuals providing professional services, such as accountants, attorneys, models, medical providers.
 - d. Consultants who routinely hold themselves out to the public as providing services for a fee.
 - e. Under certain circumstances, an employee could be considered an Independent Contractor if the following conditions are met:
 - They must meet the requirements of the "Conflict of Interest" policy. (Refer to the Board of Trustees policy on "Conflict of Interest").
 - They should operate a business outside the University and offer their services to the public.
 - They supply their own equipment and supplies.
 - They complete the work on their own time and at their own discretion.

Before a determination is made, please contact the Director of Accounting Services for this exception.

When paying an independent contractor, the department should complete a written agreement and a purchase order.

A Form W-9 "Request for Taxpayer's Identification and Certification" must be completed by the independent contractor and submitted to support the payment request to the Accounts Payable Office. The Form W-9 can be found at this link:

<http://www.irs.gov/pub/irs-fill/fw9.pdf>

Independent contractors are paid through Accounts Payable and taxes are **not** withheld and the compensation will be reported to the individual at the end of the calendar year on a MISC 1099 for all amounts over \$600.

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