

FERRIS STATE UNIVERSITY

DIVISION OF ADMINISTRATION AND FINANCE

EMPLOYEE OR INDEPENDENT CONTRACTORS

Administration and Finance Business Policy

Policy Number: 2021:01

Supersedes: 2003:21

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.

DETERMINING EMPLOYEE STATUS

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:
 - a. Does the employee receive instructions on how the job is completed? (IC do not receive instructions)
 - b. Does the employee receive training for job? (IC do not receive training)
 - c. Are the employee’s services integrated into the business operations?
 - d. Are the services rendered personally? (IC can provide other employees to complete assignment)

- e. Does the employee work with assistants? (IC hire, fire and pay for their own assistants)
- f. Is there a continuing relationship with the employer? (IC do not have a continuing relationship)
- g. Does the employee have set hours? (IC sets and controls their own hours)
- h. Is the work considered full time?
- i. Is the work completed on the University's property? (IC can complete the work any place they desire)
- j. Is the work completed in a sequence set by the University? (IC have control over how a result is to be accomplished)
- k. Is the employee paid by time rather than by the project? (IC are typically paid by the job and not by time worked)
- l. Does the University supply tools and materials? (IC normally provide their own tools and materials)
- m. Can the individual realize a profit or loss?
- n. 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.)
- o. Does the individual make their services available to the general public? (IC make their services available to the general public)
- p. 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)
- q. 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.

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. Officials and referees
 - b. Guest performers or artists who are not employees of the University.
 - c. Guest speakers or lecturers brought to the University for a short duration (one or two days) because of their expertise.
 - d. Individuals providing professional services, such as accountants, attorneys, models, medical providers.

- e. Consultants who routinely hold themselves out to the public as providing services for a fee.
- f. 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.

Please reference Independent Contractor Determination Checklist (attached)

CONTACTS

For more information, please contact the following departments:

Purchasing, Associate VP Human Resources, and/or Director of Accounting

Jim Bachmeier

Vice President Administration & Finance

INDEPENDENT CONTRACTOR DETERMINATION CHECKLIST

This purpose of this form is to determine if the work perform should be classified as an Independent Contractor or an Employee. If the work is being done by a corporation, it is not necessary to fill out this form.

Name of Service Provider: _____

Brief Description of Service: _____

*The top portion (in gray) is to be completed by the **Service Provider**:*

Are you currently or have you been a student at Ferris State University?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Are you currently or have you been an employee at Ferris State University?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
If so, please identify the last date paid: _____.			
Please provide your last 4 digits of your SS# _____ and month/day of birth (MM/DD) _____.			
Are your services available to other customers?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you have the potential for profit or loss when performing this type of service?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you provide/maintain your own supplies and equipment?		<input type="checkbox"/> Yes	<input type="checkbox"/> No

Service Provider Signature: _____ Date: _____

*The bottom portion is to be completed by the **Requesting Department**:*

Will your department determine specific dates/times for the service to be completed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Will your department provide a specific workspace for the service to be conducted?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Will your department provide specific direction and control on how the service will be conducted?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Will FSU provide training on how to complete the service?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Will there be or is there a specific contract that describes the service?		<input type="checkbox"/> Yes	<input type="checkbox"/> No
Will FSU offer benefits to service provider (e.g., insurance, vacation, etc.)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Is there a specific timeline/deadline for completion of this service or project?		<input type="checkbox"/> Yes	<input type="checkbox"/> No

FOAP Manager Signature: _____ Date: _____

Printed Name: _____

Please email the fully completed questionnaire to Purchasing = purchasingdepartment@ferris.edu

<i>For Purchasing Use Only:</i>		
IC	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Initials:	Date:	

FERRIS STATE UNIVERSITY INDEPENDENT CONTRACTOR DETERMINATION CHECKLIST (ICDC) HELP GUIDE

The purpose of the ICDC is to help in determining if an individual should be treated as an Independent Contractor or an Employee. Responses can vary depending upon the situation and circumstances involved. The number of “Yes” or “No” responses does not necessarily determine worker classification but are intended to help determine key factors on who controls the worker and the work.

The IRS refers to an employee under the common-law rules as “anyone who performs services for you if you can control what will be done and how it will be done. What matters is that you have the right to control the details of how the services are performed.”

The ICDC asks a series of questions across three categories of Behavioral, Financial, & Relationship to help determine who controls what is done and how it will be done.

BEHAVIOR CONTROL

According to the IRS, “behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work.” Behavioral control is determined by evaluating the following: types of instructions given, degree of instruction, evaluation system, and training. A worker is generally considered an employee if they are given instructions about when, where, and how to work. The more training, evaluation, and instruction given to a worker the more likely they are to be considered an employee.

FINANCIAL CONTROL

According to the IRS, “financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker’s job.” Financial control is determined by evaluating the following: significant investment, unreimbursed expenses, opportunity for profit or loss, services available to the market, and method of payment. If a worker makes their services available to others utilizing advertisements and/or maintains a visible business location, they are generally considered an independent contractor. Independent contractors typically have their own equipment not purchased by University and independent contractors usually make a profit or a loss. Employees are generally paid by the hour whereas independent contractors are generally paid a flat fee by the job.

TYPE OF RELATIONSHIP

Written contracts, employee benefits, permanency of relationship, and services provided help determine the type of relationship. Independent contractors are required to have a contract and cannot receive employee benefits. If the worker is expected to continue an ongoing relationship with the university, they generally should be treated as an employee. If the worker provides services that are for a key activity to the university (instructing, etc.), the worker should be treated as an employee.

The key consideration when going through the ICDC checklist is to determine who controls what will be done and how it will be done. If all questions are answered, the worker classification should be fairly clear.

For more information and guidance, visit the full IRS article that this help guide is derived from at:

<https://www.irs.gov/taxtopics/tc762>