

INTERNAL REVENUE SERVICE (IRS) GUIDELINES

To help determine whether a worker is an employee or an independent contractor for wage withholding purposes, the IRS has developed a multiple-factor control test based on common law principles; i.e., principles that have evolved in the courts. The factors can be used to help determine what degree of control by the university over the worker is sufficient to establish an employer-employee relationship. The degree of importance of each factor varies depending upon the occupation and the context in which the services are performed. The result is a judgment based on the combined weights of each factor; there is no absolute quantifiable result, although more than one-half on either side is a strong indication. If the relationship is still unclear after applying this test, the individual should be classified as an employee.

The factors on which the relationship should be measured are the following:

- A. Instructions to the worker: If the university has the right to require that the worker comply with instructions about when, where, and how he/she is to perform the assigned work, the worker should ordinarily be an employee.
- B. Training: Providing training to the worker by an experienced employee, by correspondence, by requiring the worker to attend meetings, or by other methods indicates that the university wants the services performed in a particular method or manner; therefore, the worker is being treated as an employee.
- C. Integration of worker's services into university operations: When a worker's services are an integral part of the operations of the department, it generally shows that the worker is subject to the direction and control of the university, and should be, therefore, an employee. An independent contractor's services can usually stand alone and are not integrated into departmental operations.
- D. Requirement that services be rendered personally: If the department requires that the services be rendered personally by the individual, a university interest in the methods used to accomplish the work, as well as in the results, is presumed and, therefore, an employee relationship is suggested.
- E. Hiring, supervising, and paying assistants: If the university has the responsibility and authority to hire, supervise, and pay the worker's assistants, that factor indicates control over the workers and an employee relationship. However, if the worker hires, supervises, and pays the other assistants pursuant to a contract agreement in which he/she is responsible only for the attainment of a result, this factor indicates an independent contractor status.
- F. Continuity of the relationship: A continuing relationship between the university and the worker indicates an employer-employee relationship, even where work is performed at irregular intervals. An independent contractor has a relationship that ends when the services are completed.
- G. Setting the hours of work: The establishment of set hours of work for the worker by the university is a factor indicating control and, therefore, indicates an employee-employer relationship.
- H. Requirement for full-time work: If the worker is required to devote essentially full time to the university, the university is implicitly restricting the worker from doing other gainful work; therefore, an employee relationship exists. An independent contractor, on the other hand, is free to work when and for whom he/she chooses. (For Internal Revenue purposes, full-time does not necessarily mean eight hours per day or a five- or six-day week.)
- I. Working on the university premises: If the work is performed on the university premises, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off university premises, such as at the worker's office, indicates some freedom from control. However, the importance of the factor in determining the employment relationship depends upon the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.
- J. Setting the order or sequence of work: If the worker is required to perform services in the order or sequence set by the university, that indicates that the worker is not free to follow his/her own pattern of work but is subject to the control of the university. Even if the university does not set the order or sets it infrequently, it is sufficient to show control if the university retains the right to do so.
- K. Requiring regular reports: A requirement that the worker submit regular written or oral reports to the university indicates a degree of control over the employee and is an indication of an employee-employer relationship.

- L. Payment to the worker by hour, week, or month: Payment by the hour, week, or month generally points to an employer-employee relationship. An independent contractor is customarily paid by the job or on a commission basis.
- M. Payment of the worker's business and/or travel expenses: The university's paying of the worker's business and/or travel expenses is ordinarily indicative of an employee-employer relationship. (At the University of Houston, it is acceptable to independently contract with visiting lecturers or collaborators for whom travel expenses are paid, as long as the majority of other factors do not prohibit contracting.)
- N. Furnishing worker's tools and materials: The fact that the university furnishes significant tools, materials, and other equipment tends to indicate the existence of an employee-employer relationship. An individual working as an independent contractor would furnish his/her own tools and materials.
- O. Significant investment in facilities by the worker: If the worker depends upon the university facilities in which to perform the work, this indicates the existence of an employer-employee relationship. If the worker invests in facilities or premises (such as an office or studio) in which to do the work for the university, that factor tends to indicate that the worker is an independent contractor.
- P. Realization of profit or loss by worker: A worker who is not subject to profit or loss as a result of his/her work for the university is in an employment relationship. A worker who can realize a profit or risks suffering a loss as a result of university work is generally in an independent contractor relationship.
- Q. Working for more than one organization at the same time: A worker who works exclusively for the university tends to be in an employee-employer relationship, whereas a worker who performs significant work for multiple unrelated persons or firms at the same time generally indicates that the worker is an independent contractor.
- R. Availability of the worker's services to the general public: The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
- S. University's right to discharge the worker: The right to discipline and to discharge a worker based on behavior and performance is a factor indicating that the worker is an employee and the university is an employer. An independent contractor cannot be fired as long as the contractor produces a result that meets the contract specifications.
- T. Worker's right to terminate the relationship: If the worker has the right to terminate his or her relationship with the university at any time without incurring liability, that indicates an employee-employer relationship; whereas an independent contractor is legally obligated to complete the terms of the contract.
- U. Provision of employee-type benefits: Provision of paid vacation, sick leave, medical insurance, and retirement benefits is clearly indicative of an employee-employer relationship. The fact that workers' compensation is provided does not indicate an employer-employee relationship where no other employee benefits are provided.