

DIVISION OF BUSINESS & FINANCE

Joseph N. asky

DATE: JUNE 13, 2018

TO: CABINET & ADMINISTRATIVE DEPARTMENT HEADS

FROM: JOE ATHY, INTERNAL CONTROL OFFICER

SUBJECT: INDEPENDENT CONTRACTOR VERSUS EMPLOYEE CLASSIFICATION

Policy Statement: It is the policy of the College to properly classify independent contractors and employees for the purpose of meeting Internal Revenue Service (IRS) regulations.

It is a matter of high importance to correctly determine whether individuals providing services to the Campus are employees or independent contractors. Although it may seem that classifying a worker as an independent contractor (rather than an employee) benefits the College due to financial savings and reduced paperwork, these perceived benefits may turn out to be false. Misclassifying an employee as an independent contractor may result in potential penalties from the Internal Revenue Service or New York State Department of Labor, by potential Workers' Compensation or unemployment claims, and by liability or malpractice suits.

To address these risks, the College is establishing policies to ensure that:

- Payments for services by individuals are classified correctly according to IRS Guidelines.
- Independent Contractor services are obtained according to SUNY procurement guidelines, Affirmative Action policies, and applicable Government regulations.
- All payments made to independent contractors are supported by proper documentation regarding selection, scope of work, and payment.
- Services retained are established under a formal agreement or contract.

In the interim, see attached IRS 20-point checklist to help you decide if your hire is an employee or contractor. In addition to that determination, please be sure that all service arrangements are to be authorized by the appropriate Department Official, and all contracts and agreements are to be signed off by the SVP Business & Finance and CFO, before any services can start.

Any questions should be directed to Joe Athy (x4220) in Business Compliance.

Thank you.

Cc: L. Davis

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IRS 20-point checklist for independent contractors

Mistakenly classifying an employee as an independent contractor can result in significant fines and penalties. There are 20 factors used by the IRS to determine whether you have enough control over a worker to be an employer. Though these rules are intended only as a guide-the IRS says the importance of each factor depends on the individual circumstances-they should be helpful in determining whether you wield enough control to show an employer-employee relationship. If you answer "Yes" to all of the first four questions, you're probably dealing with an independent contractor; "Yes" to any of questions 5 through 20 means your worker is probably an employee.

- 1. **Profit or loss.** Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from the project? (This should involve real economic risk-not just the risk of not getting paid.)
- 2. **Investment.** Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)
- 3. Works for more than one firm. Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but isn't conclusive since employees can also work for more than one employer.)
- 4. Services offered to the general public. Does the worker offer services to the general public?
- 5. **Instructions.** Do you have the right to give the worker instructions about when, where, and how to work? (This shows control over the worker.)
- 6. **Training.** Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)
- 7. **Integration.** Are the worker's services so important to your business that they have become a necessary part of the business? (This may show that the worker is subject to your control.)
- 8. **Services rendered personally.** Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, and not just the results.)
- 9. **Hiring assistants.** Do you hire, supervise, and pay the worker's assistants? (Independent contractors hire and pay their own staff.)
- 10. **Continuing relationship.** Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)
- 11. Work hours. Do you set the worker's hours? (Independent contractors are masters of their own time.)
- 12. **Full-time work.** Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)
- 13. **Work done on premises.** Must the individual work on your premises, or do you control the route or location where the work must be performed? (Answering no doesn't by itself mean independent contractor status.)
- 14. **Sequence**. Do you have the right to determine the order in which services are performed? (This shows control over the worker)
- 15. **Reports.** Must the worker give you reports accounting for his or her actions? (This may show lack of independence)
- 16. **Pay Schedules.** Do you pay the worker by hour, week, or month? (Independent contractors are generally paid by the job or commission, although by industry practice, some are paid by the hour.)
- 17. Expenses. Do you pay the worker's business or travel costs? (This tends to show control.)
- 18. **Tools and materials.** Do you provide the worker with equipment, tools, or materials? (Independent contractors generally supply the materials for the job and use their own tools and equipment.)
- 19. **Right to fire**. Can you fire the worker? (An independent contractor can't be fired without subjecting you to the risk of breach of contract lawsuit.)
- 20. **Worker's right to quit.** Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)