

Employee vs. Independent Contractor Determination

Name of Contractor: _____

Prior to entering into any contract for services, it is incumbent upon OSU to ensure that the relationship and scope of services do not represent an employer-employee situation. Each time a department contemplates a contract for services, the following information must be reviewed and the checklist completed. For Personal Services Invoices, the document must be retained in the department's files; for Personal/Professional Services Contracts, the document must be submitted with the contract to the Contracts Office for review and approval.

When contemplating a contract for services, an independent contractor is a person or business entity which:

- is free from OSU's right to direct and control
• is responsible to OSU only for the contracted result of the work, not the manner or method used to accomplish the work
• controls how the service is provided, who provides it, and the means of accomplishing it
• sets his/her own prices for goods and fees for service
• can terminate contract while not terminating his/her business
• can terminate contract while not creating an unemployment situation
• has customers and prospective customers as a result of advertising and being known by the public as a going business
• provides goods and/or services to a public of their own choosing

Below is a table comparing employee considerations with those of an independent contractor. Check all that apply in each column.

EMPLOYEE

- ___ Directed and controlled by OSU
___ Does tasks in the manner OSU requests
___ Does not have a financial investment in the work they are providing for OSU
___ OSU provides tools, equipment, and skills training
___ The individual works under OSU's business license
___ Often receives benefits beyond payment for service (retirement and health plans)
___ Receives a net check. OSU withholds income tax and FICA taxes.
___ Works at OSU's place of business
___ Works the hours set by OSU
___ Works only for OSU
___ Does not advertise
___ Eligible for workers' compensation benefits
___ Has some rights prior to termination
___ Covered by minimum wage and overtime rules
___ Protected by safety and anti-discrimination rules
___ May join or form a union

INDEPENDENT CONTRACTOR

- ___ Independent
___ Does tasks in his/her own way
___ Assumes the costs associated with doing the work for OSU
___ Comes to the job with all necessary tools, equipment, and skills
___ The individual obtains his or her own business license
___ Receives only payment for service
___ Receives a gross amount check. Pays his/her own taxes.
___ Works at his/her own office or home
___ Sets his/her own hours
___ Provides services to multiple entities
___ Has customers as a result of being known by the public as a business
___ Not covered by workers' compensation
___ No termination rights unless contracted
___ Paid as contracted; no overtime
___ No such protection
___ No right to union representation

As you consider the guidance in the bulleted list, and then complete the checklist in the columns above, if you find that the relationship being considered falls more into the Employer/Employee category, you should make contact with the Human Resources group first in order for them to consult with you on the most appropriate mechanism for hiring the individual.

Once the contract and this form is submitted to the Contracts Office, a final review will be made. If the contract appears to be a potential Employer/Employee relationship, the Contracts Office will hold the contract for consultation between Human Resources and the department.

I certify that this form was prepared accurate to the anticipated scope and performance of the Contractor listed above:

Form Prepared By: _____ Date: _____

Form Reviewed By (Contracts Officer): _____ Date: _____