

Worker Classification Policy: Employee v. Independent Contractor Status

Approved: February 14, 2011

Other Information: Internal Revenue Code and Regulations <http://www.irs.gov/pub/irs-pdf/p1779.pdf>, Fair Labor Standards Act, The General Laws of Massachusetts c. 149, Section 148B, and 2008 Mass. Attorney General Advisory.

Office/Administrator Responsible: Controller's Office/Controller

Introduction

This policy assists the college in determining whether an individual who performs services for the college should be hired as an employee or independent contractor (self employed individual). The IRS and other governmental agencies assess significant penalties for misclassification of employees as independent contractors.

Scope

This policy applies to faculty, staff, and other duly authorized representatives of Smith who might consider hiring an independent contractor to perform services for the college.

Policy

Any individual performing services for the college is presumed to work under the direction and control of the college and therefore is deemed to be an employee unless the individual meets the independent contractor criteria established within this policy **and** provides the college with a valid U.S. federal taxpayer identification number (Employer Identification Number (EIN) or Social Security Number).

Non U.S. citizens who do not have Resident Alien status cannot work as independent contractors. For more information regarding allowable payments to non-resident aliens please refer to the Payments to Non-Resident Aliens Policy <http://www.smith.edu/controller/Policy.php>.

IRS guidelines state that an individual's classification is based on the particular facts and circumstances of each case; no one fact determines the classification. The IRS currently emphasizes three broad based categories in determining independent contractor status: behavioral control, financial control, and the overall relationship. In addition, to properly classify someone as an independent contractor under the General Laws of Massachusetts, Chapter 140, Section 148B, an employer must establish that: 1) the individual is free from control and direction in connection with the performance of the service; 2) the service is performed outside the usual course of the business of the employer; and 3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Accordingly, for an individual to be hired as an independent contractor at Smith College, the following criteria must **all** be met:

1. *The individual is free from control and direction in connection with the performance of a service, both under the individual's contract for the performance of service and in fact.* The individual is not supervising or being directly supervised by Smith College employees. The individual is generally free from the college's control and direction in performing the service, both under a contract and in fact (i.e. carries out the service with minimal instruction, completes the job using his or her own approach with little direction, dictates hours worked on the job, and so forth).
2. *The service is performed outside the usual course of business of the employer.* The service provided by the individual is not generally available within the college and is not comparable to those services regularly performed by employees of the college.
3. *The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.* Normally the individual must have a history of offering and performing similar services for other customers and being paid for such work as an independent contractor.

4. *The individual must not be a student at the college and must not be a current employee of the college in any capacity. Current employees must be paid on payroll. Contact Human Resources if you wish to hire a current employee to perform work. If the individual is a former employee or student, the individual must meet the general requirements for classification as an independent contractor and may not return to perform the same work he or she performed for the college as an employee or student worker.*
5. *The individual is not assigned office space and does not require administrative services provided by the college.*
6. *The services are project-driven, provided on an intermittent basis as required or over a short term. Individuals providing services on a steady, full time or near full time basis for an extended period are generally considered employees by the IRS notwithstanding any consulting contract which may be in effect.*

Final determination of an individual's classification as an employee or independent contractor will be made by the Controller or delegate. Departments and hiring managers are not authorized to make this determination.

Exceptions

The following payments are exempt from independent contractor review; however **all** are subject to a **written contract** unless expressly stated otherwise:

1. Guest speakers receiving an honorarium or speaker fee for a one-time engagement (contract recommended, not required).
2. Human subjects for clinical trials (written contract not required).
3. Athletic officials.
4. Musicians, singers, dancers, D.J.'s, painters, sculptors, comedians, clowns and other similar entertainers doing work on a limited basis.
5. Construction contractor or architectural/engineering services.
6. Foreign citizens doing work entirely in a country outside the U.S. for whom there is no U.S. tax implications.

Procedure

Faculty and staff who believe the individual worker is an independent contractor should complete the following forms prior to the start of the individual's work:

1. Submit the [Employee v. Independent Contractor Questionnaire Form](#) and [IRS Form W-9](#) (new vendors) to the individual for completion and request that it be returned directly to you.
2. After receipt of the above two forms, complete the [College Checklist: Employee v. Independent Contractor](#).
3. Send all three original forms to the Controller's Office. Upon review, the Controller's Office will return a copy of the College Checklist: Employee v. Independent Contractor indicating the classification determination.

All independent contractors must provide the college with a signed copy of [IRS Form W-9](#) before any payments will be processed. The college will issue IRS Form 1099-MISC, which reports the amount of compensation paid to the independent contractor on an annual basis, if the payments to that contractor equal or exceed \$600 in the calendar year.

You may agree to pay the independent contractor for expenses incurred; however these payments to the contractor will be considered income and reported annually on Form 1099-MISC. Therefore, you should not request or accept the independent contractor's original receipts for expenses as he or she will need these documents as support for their business expenses when filing tax returns with the IRS. You may request copies of receipts to support the payment of expenses. The college will not pay expenses directly to vendors on behalf of the independent contractor.

4. After the completion of work, submit payment requests to the Controller's Office (Accounts Payable) on the [Accounts Payable Voucher](#) form along with the contract (if applicable), invoice or other supporting documentation that includes a description of the services and the agreed-upon costs/pay rate.