

HUMAN RESOURCES ADMINISTRATIVE MANUAL
CLASSIFICATION, COMPENSATION, AND PAYROLL:
DETERMINATION OF STATUS – EMPLOYEE VS. INDEPENDENT CONTRACTOR



UNIVERSITY SYSTEM
OF GEORGIA

Determination of Status – Employee vs. Independent Contractor

CITATION REFERENCE

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Policy Statement

The University System of Georgia complies with the provisions of Internal Revenue Service regulations regarding personal service arrangements that create an employer/employee or an independent contractor relationship.

The Internal Revenue Service (IRS) and other government agencies assess employers with significant penalties for misclassifying employees as independent contractors. The University System of Georgia must apply common standards in order to reduce the financial and political risks of such misclassifications. The purpose of this policy is to provide a standard process for determining the appropriate worker classification of individuals engaged to perform services for the University System. Further, its purpose is to develop documentation supporting the respective department or unit's review and analysis for each individual compensated as an independent contractor by the University System, in the event of a government audit.

Applicability

All units of the University System of Georgia are covered by this policy.

Who Should Read This Policy

All Human Resources staff and employees within the University System of Georgia should be aware of this policy.

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Definitions

These definitions apply to these terms as they are used in this policy:

- **Employee:** An individual who performs personal services for the Institution where the Institution has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also as to the details and means by which that result is to be accomplished. It is not necessary that the Institution actually direct or control the manner in which the services are performed; it is sufficient to establish an employee-employer relationship that the Institution has the right to do so.
- **Employer:** The Institution, when it has a relationship with an individual performing services for its benefit, and where the Institution has the right to subject the individual to its will, and control not only what shall be done but how it shall be done.
- **Independent Contractor:** An individual - who performs personal services for the Institution where the Institution has the right to specify the result to be accomplished by the work, but not the means and methods by which the result is to be accomplished.

Process and Procedures

The characterization of individuals as independent contractors or employees has important tax and non-tax consequences to both the Institution and the individual. It is generally more advantageous to federal and state governments to have an individual classified as an employee. When faced with a characterization issue during the course of an employment tax audit, the Internal Revenue Service (IRS) will almost always treat individuals as employees, absent a reasonable basis for classification as an independent contractor on the part of the employer. Misclassification of an individual can be very expensive to the Institution (or to persons in positions of responsibility), so it is essential that proper characterization of an individual be determined before any payments are made to an individual for services performed.

When a person performing services for an Institution meets the criteria established by the IRS for status as an independent contractor, he/she shall not be subject to income tax withholding through the Institution's payroll. When a person performing services for the Institution does not meet the criteria to be considered an independent contractor, he/she shall be treated as an employee, hired through the normal Institutional process subject to all applicable policies and requirements, and subject to income tax withholding through the Institution's payroll. Retirees of the University System of Georgia are not eligible for re-employment as independent contractors but are subject to the University System policy on Employment Beyond Retirement. (This eligibility clause is not applicable to S-Corporations.)

To assist in determination of whether an individual is an employee under the common law rules, 20 factors have been identified that indicate whether sufficient control is present to

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establish an employer-employee relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. It does not matter that the employer allows the employee freedom of action, so long as the employer has the right to control both the method and the results of the services. The 20 factors indicating whether an individual is an employee or an independent contractor are provided in the University Business Practice Manual Section 5.5.

The IRS “Common Law” Test: As indicated in the definitions above, the most important consideration in determining whether an employer-employee relationship exists with an individual is whether the Institution has the right to instruct and control the individual with respect to both the results and the details of the work that is to be performed. The IRS has developed a 20-factor “common law” test which it uses to determine whether sufficient control and supervision exist to warrant an employee classification of an individual. However, no definitive combination of factors has been established by the IRS with which a concrete determination can be made. The factors are simply indicators which may be used to assist in determining the degree of control that may be exercised over the individual, and thus the most appropriate classification for the individual.

Classification Checklist and Criteria: In an effort to simplify the determination process for the most common situations in which the Institution seeks to obtain the services of individuals, the IRS has developed criteria for classifying an individual as an independent contractor based on 20 determining factors. These classification criteria are provided as guidance to departments for determining an individual’s classification.

Responsibility for Determining the Classification

Department Responsibility: The primary responsibility for determining the classification of an individual as an employee or an independent contractor rests with the department obtaining the personal services. The department must make the initial determination by review and application of the factors associated with Determination of Status – Employee vs. Independent Contractor, BPM 5.5

Examples of Individuals Generally Classified as Employees: The examples below are not all-inclusive. Departments should determine an individual’s classification by using the Employee Versus Independent Contractor Classification Checklist as a guide whenever doubt exists as to the proper classification of an individual providing service to the Institution.

Employee examples include:

- Contract-Classified Staff
- Credit or Noncredit Primary Course Instructors
- Faculty
- Hourly Employees

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- Medical Residents
- Professional Staff
- Research Assistants
- Student Helpers
- Teaching Assistants

Examples of Individuals Generally Classified as Independent Contractors: The examples below are not all-inclusive and may not be suitable depending upon circumstances and the amount of control the Institution has over the individual performing the services. Departments must complete the Employee Versus Independent Contractor Classification Checklist form to support any determination that an individual is to be classified as an independent contractor.

Independent contractor examples include the following:

- Artists
- Consultants
- Guest Lecturers and Seminar Leaders (occasional service and not Primary Course Instructors)
- Lawyers
- Musicians
- Public Stenographers
- Veterinarians

Responsible Parties and Contact Information

Party	Responsibility	Phone/Email/URL
Vice Chancellor for Human Resources, USG	Maintain policy, provide guidance to Institution Human Resources Officers on effective utilization of policy, monitor for compliance, update the system as necessary, and respond to campus requests for updates.	404-962-3235 usg-hr@usg.edu
Institution Chief Human Resources Officers	Monitor for compliance, provide guidance to Institution administration and staff.	See University System HR Officer Listing

Appendices (Internal Documents, Forms and Web Links)

- [USG Business Procedures Manual 5.5 Employee vs. Independent Contractor](#)
- **Sample Employee vs. Independent Contractor Status Determination Form:** If consideration of the relevant facts presents a strong case for classifying the individual as

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an independent contractor, an Employee vs. Independent Contractor Status Determination Form is then completed.

Related Documents and Resources (External)

- None

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