

University of Wyoming

Employee/Independent Contractor Determination Checklist

Instructions: Employee/ Independent Contractor Determination Checklist **must be completed prior to commencement of services** AND attached to all personal service contracts and purchase requisitions for personal service arrangements that are for \$2,500.00 and above.

Contact Information

Contracting Department: _____ Date: _____
Department Contact: _____ Phone No: _____ Fax No: _____
Company OR Contractor Name: _____
Street Address: _____
City: _____ State: _____ Zip Code: _____

Citizenship

Payee is U.S. Citizen or Permanent Resident individual or U.S. business Yes No
(If no, please forward to Tax Office for additional analysis - tax@uwyo.edu)

Employee Relationship

1. Is individual a former employee? Yes No
2. If yes, will the individual be performing services in a substantially similar capacity or under the similar direction and control as when they were an employee? Yes No
(If Yes, stop and process payment through payroll)
3. Is individual a current employee? Yes No
4. If yes, does employee offer similar services to the public? Yes No
(If No, stop and process payment through payroll)

Description of Services / Relationship

- a. Please describe the services: _____

- b. Dates services will be provided: _____
- c. This is an extension of a previous personal services agreement (PSA)? Yes No
 1. How many extensions have been made? _____
 2. Please provide the reason for the extension:

- d. There is a continuous relationship. (The recurring intervals can be irregular.) Yes No
- e. The worker is required to provide written or oral reports on the status of a project. Yes No
- f. The worker can terminate his or her work and not be liable to the University. Yes No
- g. Is there an issue that could create a potential conflict of interest? Yes No
 1. Example: The worker is the spouse or relative of an employee. If there is a potential conflict please describe how the conflict will be avoided:

Scope of Work / Behavioral Control

- a. The University directs when, where, and how the work is done. Yes No
- b. The University requests that the worker undergoes University-provided training. Yes No
- c. The University designates the number of hours worked per week. Yes No
- d. The University requests that a particular person of the business performs the work. Yes No
- e. The University has control over supervising, hiring, firing, and paying the worker's assistants. Yes No
- f. The University provides tools, equipment and / or office space for the worker to perform the services. Yes No

Payment / Financial Control

- a. The worker is paid by the hour, day, week, or month, rather than by the job or on from an invoice. Yes No
- b. Is the University the worker's only client? Yes No
(If Yes, stop and process payment through payroll – the worker must be operating an independent business or sole proprietorship that serves other clients in order to be paid as an independent contractor)
- c. The University pays the worker's ordinary business expenses. Yes No
(Examples include: travel, equipment, or materials necessary for the job)

Conclusion and Certification

If the majority of the answers to the above questions are No, the service relationship may qualify for independent contractor classification. If the majority of the answers to the above questions are Yes, the service relationship may be deemed an employment relationship. Contact the Tax Office (307-766-2821; tax@uwyo.edu) for assistance in making a final determination. If there are additional circumstances that qualify this person as an independent contractor, please explain them below.

I certify that I have a sufficient understanding of the service relationship to accurately complete the Employee/Independent Contractor Determination Checklist. Based on the above analysis, I have determined that _____ is to be treated as an independent contractor with respect to the services to be performed for the University of Wyoming.

I understand that should the Internal Revenue Service disagree with the classification made, my department will be held financially responsible for any additional compensation (due to gross up, including fringe rates), taxes, penalties and interest that the IRS or other regulatory bodies may assess.

Name of Department _____ Date _____

Department Signature _____ Printed Name _____

Title _____ Phone Number _____

UNIVERSITY OF WYOMING

Tax Office

Room 250, Knight Hall • Dept 3314, 1000 E. University Ave • Laramie, WY 82071
(307) 766-2821 • fax (307) 766-4836 • e-mail: tax@uwyo.edu • www.uwyo.edu

Employee / Independent Contractor Determination Worksheet Instructions to the Form

Purpose of the Form:

The Employee/Independent Contractor Determination Worksheet is required to comply with tax and employment laws and regulations concerning the classification of a service provider as an employee versus an independent contractor, and to promote timely payments to workers. Proper classification of a worker determines UW's tax withholding and reporting obligations and the system (payroll versus accounts payable) from which the worker should be paid. Misclassification of employees as independent contractors results in a failure to withhold and remit income and employment taxes and exposes UW to significant IRS assessments of tax, penalties, and interest, as well as litigation claims by any misclassified workers.

Line instructions for Contact Information Section

Contracting Department:

Enter the name of the department that will be making the professional services payment.

Department Contact:

Enter the name of the first point of contact who can answer questions regarding the contract terms as well as information regarding the contractor.

Company OR Contractor Name:

Enter the name of the individual or company that the services are being provided by.

Street Address, City, State, and Zip Code:

Enter the street address, city, state, and zip code for the service provider.

Line instructions for Citizenship Section

In this section, you will need to determine if the payee for professional services is a US individual or entity or a foreign individual or entity. If they are a US person or entity, you may continue with the form. If they are a foreign individual or entity, you must contact the Tax Office for further analysis as UW may be subject to additional IRS withholding and reporting obligations. Each foreign payee will be subject to different withholding and reporting obligations based on their country of residence/establishment and other factors. Please contact the Tax Office for this assessment **BEFORE** anything is negotiated with a foreign individual or entity.

Employee Relationship Section

Line 1

If the service provider is an individual, it must be determined if they are a former UW employee. This is very important information that is taken into consideration when determining if an individual can be paid as an independent contractor for providing services.

Line 2

The job duties of the service provider's prior employment with UW must be compared to the current services being negotiated. Generally, if the individual will be essentially doing the same tasks as an independent contractor that they performed as an employee, they will need to be paid through payroll.

Line 3

If the service provider is an individual, it must be determined and indicated if they are a current employee of UW.

Line 4

If a current employee is providing services to UW as an independent contractor, it must be determined that they provide such services to other clients that are separate from UW and are operating as a sole proprietorship or business. They must have an Employer Identification Number (EIN) for the separate business in order to be paid by UW. If the services that the current employee is being contracted for relate in any way to

the services that they are providing to UW as a current employee, they must be paid through payroll.

Example 1:

Employee A is currently employed by UW by the Department of History as a full time History Professor. Employee A has a side business that provides photography services to other clients. A UW department would like to contract with Employee A to take professional pictures for a brochure. It would be allowed for Employee A to retain their current employment with UW as a history professor and be hired and paid as an independent contractor for photography services if the business serves other clients and has an EIN for tax purposes. The professional photography services are in no way related to Employee A's current employment with UW.

Example 2:

Employee B is employed by UW by the Art Department as a professor. Included in their scope of employment is teaching graphic design classes. Another UW department would like to contract with Employee B for some website design. Under these circumstances, Employee B would not be allowed to be paid as an independent contractor as the services that would be provided would be too closely related to the services that they are currently providing to UW as an employee. This applies even if Employee B has a separate business from UW that serves other clients and has an established EIN for tax purposes. The services are too closely related to hire Employee B as an independent contractor. With this being said, Employee B can still perform the services for the other department and be paid for the services. The additional service payments would have to be paid

through payroll as additional wages.

Description of Services / Relationship

Line a

Provide a brief description of services being provided. If accompanied by a contract or statement of work, you may reference either document in lieu of describing the service arrangement.

Line b

Provide the approximate dates that the service will be performed.

Line c

Indicate if this is an extension of a previous services agreement.

Line c-1

If this is an extension of a previous services agreement, indicate how many extensions have been made.

Line c-2

Please indicate the reason for an extension and the combined dollar amount of the extension.

Line d

Indicate if this is a continuous arrangement. If you contract with this individual or business on a regular basis you will indicate 'Yes'. If this is the first time that you are contracting with this person or individual or if you work with them very infrequently, you may indicate 'No'.

Line e

Indicate if it is required for the service provider to provide any kind of written or oral reports on the status of the contract.

Line f

Indicate if the contractor can terminate their work and NOT be responsible to the University for

any unfinished work. This will generally be 'No' for an independent contractor. If we have a contract with the service provider, they are generally locked in to the terms under the contract. If they do not perform the contract terms, UW would have legal recourse against the contractor for the portion of the contract that was not fulfilled.

Line g

If you know of any potential conflicts of interest, you would note these on this line. Enter ANY concerns that you may have. Any information or knowledge would be very valuable for the Tax Office when making this determination. There are two examples of potential conflicts of interest directly on the form.

Scope of Work / Behavioral Control

This section focuses on how much control UW exercises over the independent contractor. If UW has too much control over how the contractor accomplishes their work, they must be paid as an employee.

Line a

If an authorized representative from UW tells the contractor when, where and exactly how the work must be done, they will need to be paid as an employee. If UW simply tells the contractor what must be accomplished, and the contractor determines on how to get the job done they may be hired as an independent contractor. Generally, if this section is checked 'Yes' they will need to be hired as an employee and paid through payroll.

Line b

If UW requires a contractor to attend mandatory UW provided training, this could indicate

employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Line c

If UW designates the number of hours per week, this could indicate employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Line d

If UW asks for a specific person from a business to perform services, this could indicate employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Line e

If UW directly has control over supervising, hiring, firing, and paying the contractor's assistants, this would indicate employment status. The independent contractor should control all of these factors. They should be hired to get a specific job done with minimal control from UW.

Line f

If UW provides tools and equipment for the contractor, this could indicate employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Payment / Financial Control

Line a

If the worker is paid by any other method than by job or invoice as the job progresses, this could indicate employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Line b

If 'Yes' is entered on line b, we will NOT be able to pay the worker as an independent contractor. The services being provided to UW by an independent contractor must be provided through an independent sole proprietorship or business. If the worker only provides services to UW, it cannot be determined that they are operating a separate sole proprietorship or business. If the worker does offer similar services to the general public or provide similar services to other clients, they will need to be hired

as an employee. A 'Yes' response to this line will require that the contractor be hired as an employee and be paid through payroll.

Line C

If UW pays the worker's ordinary business expenses, this could indicate employee status. A 'yes' answer on this line alone will not determine employment status, it will just be included in the overall analysis.

Conclusion / Certification

The Tax Office will make the final determination of either independent contractor or employee based on this form as well as the supporting documentation when a payment is initiated through the accounting system. If you have any questions or concerns or would like to discuss anything contained in this form, please do not hesitate to call the Tax Office (307-766-2821).

A valid, original signature is required at the bottom of the form as well as job title and contract information. Please do not forget to complete this section before any payments are made to the contractor.