



Symposium for Research Administrators

University of Wisconsin-Madison
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Contractor vs. Employee: Things to Think About

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Agenda

- ❖ High-Level Indicators: Contracting and Employment
- ❖ Process Requirements: Contracting and Employment
- ❖ How to develop and present information needed to move forward with employment or contracting
- ❖ Examples and Discussion

Focus of Session:

- *Individuals providing service (vs third party commercial vendors and/or subrecipients)*
- *Payments exceeding \$5,000*

High-level indicators: Contracting and Employment

Employer/Employee relationship

“Generally exists if the institution has the right to control and direct the individual as to what should be done and how it should be done” (even if the institution doesn’t ever exercise that right).

(UW System Admin Policy 235)

High-level indicators: Contracting and Employment

Independent Contractor

“Generally exists if the service is provided regularly and continuously to the general public, and the service is the principal source of livelihood or profit. The institution may not control how the work must be done, only the result of the work.”

(UW System Admin Policy 235)

High-level indicators: Contracting and Employment

Step 1: Verify the individual is NOT currently employed by UW/UW System

Step 2: Confirm the answers to these questions:

Are we:

- directing and controlling how, where and/or when the work is done?
- providing any university resources (facilities, supplies, equipment, etc)?
- paying by the hour, week or month (vs by the job or work product)?
- Will the person be an integral part of the business operation, on an ongoing/continuing basis?
- Do we have the right to discharge or terminate the individual?
- Is the individual supervising or managing UW employees?
- Is the work similar to that done by UW employees, or similar to the work the individual did in previous UW employment?

- *If the answer to any of these questions is “**yes**”, there is a good possibility this is an employer-employee relationship.*

High-level indicators: Contracting and Employment

Step 3: Confirm the answers to these questions:

(Based on “Employee/Independent Contractor Determination Questionnaire”)

- Teaching: “Guest lecturer” (lecturing only once or twice a semester)?
 - Research: Advisory or consulting capacity with a University professor/doctor (collaboration between equals)?
 - If not Teacher/Lecturer/Instructor/Researcher:
 - Does the individual routinely provide same/similar service to the general public as part of continuing trade/business with opportunity for profit or loss?
 - Does the individual advertise these services, or provide the services under a registered or licensed business name?
 - Does the individual regularly use written contracts which also identify the individual as an independent contractor for federal tax purposes?
- *If the answer to any of these questions is “yes”, there is a good possibility the individual is an independent contractor.*

High-level indicators: Contracting and Employment

Disclaimer:

For the purposes of this presentation, the materials provided in the previous slides assist in evaluating high-level indicators of contracting vs. employment. However, when making a formal determination of contracting vs. employment, other resources are used including (but not limited to) the following:

Business Services Policy/Procedures

- <http://www.bussvc.wisc.edu/acct/policy/pir/pirpol.html>
- <http://www.bussvc.wisc.edu/purch/ppp33.html>

Internal Revenue Service (IRS)

- Independent Contractor or Employee? <https://www.irs.gov/pub/irs-pdf/p1779.pdf>

High-level indicators: Contracting and Employment

Additional Resources

UW System Administrative Policy 235 (formerly FPPP31)

- <https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/personal-services-payments/>

Attachments

#2 - Factors to Consider in Determining Employer-Employee Relationship

- <https://www.wisconsin.edu/uw-policies/235-attachment-2-factors-to-consider-in-determining-employer-employee-relationship/>

#3 - Employee or Independent Contractor

- <https://www.wisconsin.edu/uw-policies/235-attachment-3-employee-or-independent-contractor/>

#4 - Employee/Independent Contractor Determination Questionnaire

- https://www.wisconsin.edu/uw-policies/download/related_documents/235/Attachment-%234.pdf

OHR Policy 2.03 - Contracts for Personal Services

- <https://kb.wisc.edu/ohr/policies/page.php?id=52772>

Process Requirements: Contracting and Employment

1. **BEFORE**** any work or services begin, confirm and evaluate the:
 - nature/type of work or service
 - duration of the work or service

** Both Employment and Contracting must be approved by the proper parties (including UW Madison Business Services or the Office of Human Resources) **before any work begins or any services are provided.**

- reduces turnaround time and confusion, and results in better relationships with individuals providing work or service
- If work has begun, it may need to be suspended until appropriate corrective action has been taken

Process Requirements: Contracting and Employment

2. Before any work or services begin, evaluate high-level indicators of employment or contracting.
 - If strong high-level indicators of an employer/employee relationship, work with your local human resources staff early on in the process to evaluate further and have them make an initial determination.
 - If strong high-level indicators of independent contracting, work with your local Purchasing/Business Services staff to evaluate further and have them make an initial determination.

Examples and Discussion

Advantages of Employment

Talk with your local Human Resources staff for more assistance with employment

- Hiring an employee can be relatively fast and easy. Employees can be hired directly without having to conduct an open recruitment for the position (this is called a “Waiver” of recruitment) if the situation falls under one of the established Waiver Reasons. For example, waiver Reasons include “25% or less”, “2 years or less”.
- A contractor cannot formally supervise/manage UW employees (ie hire, discipline, conduct performance evaluations, etc), but an employee can.
- An employee does not have to purchase business insurance and is covered by workers compensation but a contractor has the responsibility for carrying business insurance and protecting for injury/damages on the job
- Appointments can be set up as Hourly or Lump Sum if needed, when applicable

Questions?

