



**THE GEORGE  
WASHINGTON  
UNIVERSITY**  
WASHINGTON, DC

**Responsible University Official:** Tax  
Manager  
**Responsible Office:** Tax Department  
**Last Revised Date:** March 13, 2015

## **WORKER CLASSIFICATION AND PAYMENT**

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### **Policy Statement**

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Each individual Service Provider (“Worker”) must be properly classified as an Employee or Independent Contractor in accordance with federal and state tax and employment laws. Departments that engage Workers must submit the required documentation for determination of each Worker’s status *before* any services are performed or payment requests are processed. All individuals who perform services for the university are presumed to be Employees unless the relationship satisfies Internal Revenue Service (IRS) and related common law standards for Independent Contractor status. This policy applies to payments to individuals, sole proprietors, and LLC’s treated as individuals for federal tax purposes, for services. This policy does *not* apply to payments made to a corporation for an individual’s services or to payments for goods/merchandise.

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### **Reason for Policy**

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This policy is required to comply with tax and employment laws and regulations concerning the classification of a Worker as an Employee versus an Independent Contractor, and to promote timely payments to Workers. Proper classification of a Worker determines the university’s tax withholding and reporting obligations and the system (payroll v. 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 the university to IRS assessments of tax, penalties and interest, as well as claims by misclassified Workers.

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### **Who is Governed by this Policy**

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Faculty and staff

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## Policy

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### Classifying the Service Provider

The procurement of services from an individual requires an evaluation of whether a Worker should be classified as an Employee or as an Independent Contractor. This evaluation and classification must be performed *before* engaging the individual to perform services so that the university can comply with its tax withholding and reporting responsibilities, and so payment to the Worker will not be delayed. The evaluation must be based upon IRS and related standards (see Related Information below), and *not* upon administrative ease, budget constraints or funding guidelines.

Individuals who perform services for the university are presumed to be Employees of the university unless the relationship satisfies IRS standards for Independent Contractors. The primary difference in these two business relationships is in the degree of control the university exercises over the Worker. Employees are paid through payroll and the university must withhold income and employment taxes, while an Independent Contractor is paid via accounts payable without tax withholding. In general, an Independent Contractor is engaged when the services needed are urgent, special, temporary, or highly technical and cannot be performed economically or satisfactorily by university staff members within the scope of their normal university responsibilities.

Further details regarding Employees and Independent Contractors are set forth in the Definitions section of this policy, and in Appendix A.

Departments initiate the classification process by completing the Worker Classification Process set forth in Appendix B. The tax department will review the documentation submitted and provide a basis for the determination.

### **Special Considerations**

#### A. Research

Research grants often require reports, presentations, and/or review by experts not employed at the university. An expert has specialized knowledge directly related to the science and scope of a project. Although they generally do not operate businesses, they can qualify as Independent Contractors if the university does not control their activities. Please see Appendix A for information about retaining current Employees or recently departed former Employees as Independent Contractors in order to conduct research.

#### B. Payments to Students

Students generally do not qualify to be treated as Independent Contractors. Exceptions require the advance approval of the tax department.

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## **Definitions**

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**Employee:** A person hired through Human Resources and paid via payroll. The university controls and directs the Service Provider's activities, both in terms of what must be done and how it must be done. An Employee may be full-time, part-time or hourly and the position may or may not be benefit eligible.

**Independent Contractor:** Also commonly referred to as; contractor, consultant, freelancer, etc. Independent Contractors are individuals, sole proprietorships, LLC's treated as individuals for federal tax purposes, etc., which render services to the general public. Contractors are responsible for the means and methods for completing a task based on specifications in a contract with the university. Contractors generally have multiple clients, maintain a separate workplace and are not directly supervised or controlled by university Employees. Independent Contractors do not receive university benefits. See *Appendix A* for additional detailed definitions and examples.

**Service Provider or Worker:** An individual about whom a determination is being made as to whether he/she is an Employee or Independent Contractor.

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## Forms

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[International Engagement Guidelines, Request Letter and Form](#)

[Worker Classification Review](#)

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## Related Information

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[Accounts Payable Services](#)

[IRS Guidance – Independent Contractor \(Self-Employed\) or Employee](#)

[IRS Publication 15-A, Employer’s Supplemental Tax Guide](#)

[IRS Publication, Independent Contractor or Employee](#)

[Procurement and Travel Services](#)

[Tax Department – Worker Classification](#)

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## Contacts

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Contact	Telephone	Email
Tax Department	571-553-8313	<a href="mailto:tax@gwu.edu">tax@gwu.edu</a>
Supplier Maintenance	202-994-2500	<a href="mailto:isupplygw@gwu.edu">isupplygw@gwu.edu</a>
Accounts Payable Services	571-553-0247	<a href="mailto:apcustsv@gwu.edu">apcustsv@gwu.edu</a>

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## Document History

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- **Last Reviewed Date:** May 8, 2018
- **Last Revised Date:** March 13, 2015
- **Policy Origination Date:** May 1, 1997

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## Who Approved This Policy

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Louis H. Katz, Executive Vice President and Treasurer

Beth Nolan, Senior Vice President and General Counsel

*This policy, as well as all [university policies](#), are located on the [Compliance Office website](#).*

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## **Appendix A: Definitions of Types of Employees and Contractors**

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### **Regular Full and Part-Time Employees**

Salaried/exempt Employees who perform services for other university departments generally do not receive extra compensation for performing those services if those duties fall within their area of professional expertise. Such assignments are generally considered a part of the job for which the Employee is already compensated.

Nonexempt Employees who "moonlight" in areas related to their primary job assignment or work skills may not be paid as Independent Contractors. All regular and overtime payments to Employees fitting this description will be made through the payroll system.

An Employee (exempt or non-exempt) who is hired to perform services completely unrelated to his/her job duties and who can prove that he/she has a separate business which offers those services to the general public may, with the approval of the Tax Department, qualify as an Independent Contractor. For example, an Employee who works in an exempt or non-exempt administrative position and is also a musician who occasionally plays at university events **AND** at other non-GW events/concerts for pay, may be paid as an Independent Contractor for the events at the university. These types of situations are exceptional and must be reviewed on an individual basis.

### **Former Employees**

As a general rule, former or retired GW Employees may not be retained as an Independent Contractor in the same tax year as the Employee's last year of employment. Exceptions to this rule require the advance approval of the Tax Office.

### **Temporary Employees**

Temporary Employees are individuals who are expected to be employed for a fixed and relatively short period of time. Payments to temporary Employees are also made through the payroll system.

## **Agency-contracted Services**

Workers hired through temporary agencies are neither Employees nor Independent Contractors. The university pays the employment agency for the services provided by these temporary workers and the agency compensates the Worker.

## **Independent Contractors**

If GW has the right to control or direct only the result of the work and not the means by which the results are accomplished, the individual or business is considered an Independent Contractor. Independent Contractors are individuals, sole proprietorships, LLC's treated as individuals for federal tax purposes, etc., which render services to the general public and meet additional IRS criteria. They usually have a separate workplace and are not directly supervised when they are working for the university. They often provide a one-time or periodic service, which fulfills a special need of GW that generally cannot be provided within the university. They are not entitled to employee benefits, are not covered by GW's workers' compensation and are not subject to federal income tax withholding requirements. Payments to Independent Contractors are made through the accounts payable system.

## **External Consultants**

External consultants (which for the purpose of this procedure are handled identically to Independent Contractors) are individuals or businesses who provide professional advice, but are **NOT** Employees of the university (not on the university payroll). They usually have a skill or knowledge not available within the university. A worker classification review must be completed for these individuals. Payments are made through the accounts payable system.

## **Internal Consultants**

Internal consultants are faculty and staff of the university who provide professional advice under certain limited circumstances, and may be compensated for their expertise. Payments are made through the payroll system.

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## **Appendix B: The Worker Classification Process**

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### **Step 1: Determining Correct Classification**

The IRS has provided guidance for determining a service provider's classification and the primary term used to distinguish the business relationship between a Worker and the university is "control." The more control the university has over the Worker and the work product, the more likely the Worker will be deemed an Employee. The IRS currently emphasizes three broad categories: behavioral control, financial control, and the overall relationship.

#### **A. Behavioral Control**

An Independent Contractor determines how he/she will accomplish the task. If the university provides training and/or instructions about how to complete the task, the Service Provider should generally be classified as an Employee.

#### **B. Financial Control**

An Independent Contractor has a significant investment in their business and can make a profit or loss due to expenses they incur for such items as tools, materials, equipment and supplies needed to run their business. Contractors make their services available to the public and have a broad customer base. If the Service Provider works primarily for GW, the Service Provider should generally be classified as an Employee. Contractors are generally paid a fixed fee based on specific tasks identified in a contract.

#### **C. Relationship**

An Independent Contractor is not eligible for employee- type benefits such as insurance, vacation, etc. If the university engages a Service Provider for an indefinite period, rather than for a specific project or period, this is evidence of an Employee relationship. In addition, if the services performed by the Service Provider are a key aspect of the university's core business (e.g. teaching), this is another indicator of an Employee relationship.

These three categories are directly related to and summarized in the “Twenty Factor Test” described in IRS Revenue Ruling 87-41. See below for the detailed list of factors. In addition to these common law factors, three basic questions assist in determining the correct classification:

- A. Will the individual be teaching a for-credit course or a course required as part of a degeered curriculum?
- B. Does the university pay as Employees others who perform essentially the same duties that are to be performed by this Worker?
- C. Has this Worker previously been paid as an Employee to perform essentially the same task?

If the answer to any of these questions is yes, then the Worker in question normally is treated as an Employee and the department should set up the Worker in payroll. The IRS default position is that an individual is considered an Employee unless sufficient facts support Independent Contractor status.

If a Worker is believed to be an Independent Contractor, then the department should move on to Step 2.

## **Step 2: Completing the Necessary Forms**

If the department wishes to hire a Worker as an Independent Contractor to performed services in the United States, then a completed [Worker Classification Review](#) form (please review the [Worker Classification Review Exemptions](#)) must be submitted to the Tax Department prior to engaging the Worker and before services are performed so that the correct worker classification can be determined.

Departments wishing to engage workers to perform services overseas must follow the process outlined on the [International Hires and Placements](#) page of [HR’s website](#).

Keep in mind that the Independent Contractor approval is generally valid for 2 years if there have been no significant changes to the relationship. Renewal forms should be submitted to continue engaging workers whose independent contractor status has expired.

The GW Employee *directly responsible for the work to be performed by the service provider* should complete the [Worker Classification Review](#) or [International Engagement Request](#) process. Certifications by administrative staff and others with insufficient knowledge of, or responsibility for, the specific work to be performed are not appropriate. The form should not under any circumstance be filled out by the Worker or shared with the Worker.

Supporting documentation may be required in order to complete the review of Independent Contractor status. The following documentation provided by the Worker strengthens the case for contractor status: client list, copies of general advertisements, brochures, business cards, letterhead, website address, or list of qualifications/experience to substantiate their independence.

### **Step 3: Final Determination**

The IRS presumes that every Worker hired to perform services is an Employee unless the IRS threshold for contractor status is met.

The Tax Department will return a signed [Worker Classification Review](#) or International Engagement Request form with the determination to the department.

If the worker is approved as an Independent Contractor, then the department should submit a signed copy of the Worker Classification Review or International Engagement Request form to Supplier Maintenance at [isupplygw@gwu.edu](mailto:isupplygw@gwu.edu) in order to get the vendor account activated. Once set up, the department can submit payment information to Accounts Payable per normal procedures.

If the Worker is not approved as an Independent Contractor, then the department should proceed to hire the individual as an Employee. Consult with your [Human Resources Client Partner](#) with regards to the hiring process.

### **IRS Twenty Factors Test**

The IRS uses the Twenty Factors Test to determine whether a Worker is an Independent Contractor or an Employee. The IRS does not assign a weight to each factor. All factors need not be present for Independent Contractor status to be appropriate.

An Independent Contractor generally:

- A. Sets the sequence of tasks needed to accomplish the work. The university has no right to set this sequence
- B. Is subject to the instructions outlined in the contract, but is not instructed by the university about when, where and how to work
- C. Furnishes his/her own tools, materials, and the like (e.g. computer, office equipment, etc.)
- D. May hire and supervise others to assist in the completion of the work. The decision to hire assistants is solely within the control of the independent contractor and in no way affects his/her remuneration

- E. Bears all business expenses associated with the performance of the work, including insurance, travel, meals and lodging
- F. Provides the equipment and place to perform the service where it is customary trade practice to do so
- G. Is in a position to realize a profit or suffer a loss as a result of his/her services

*Note:* A Service Provider paid by the hour is not in a position to realize a profit or loss; he/she is merely compensated for time and effort. If the service provider is subject to a real risk of economic loss due to significant investments or bona fide liability for expenses, such as salary payments to unrelated employees, these factors indicate the service provider is an Independent Contractor.

- A. Cannot be discharged if the contract specifications are being met
- B. Cannot terminate the service contract with the university without incurring a liability
- C. Makes his/her services available to the general public (outside the university community). This may include holding a business license, advertising a service, or providing a listing of his/her business telephone
- D. Is not providing services that become integrated into the day-to-day operations of the university
- E. Is free to work when, for whom, and for as many firms as he/she chooses and is not required to work full-time for any one firm. There should be no agreement of exclusivity with the hiring firm
- F. Choosing working hours at his/her discretion. When the work is performed on university premises, the Independent Contractor may be required to function with certain hours, but need not be present at any specific time
- G. Is paid a fixed fee
- H. Does not have a continuing relationship with the university. Services may be considered continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short-term
- I. Is not required to work on the university premises
- J. Is not subject to training by the university and uses his/her own methods to accomplish the work

Failing one or more of these factors does not, in and of itself, preclude the Worker from being an Independent Contractor. Any factors that fail should be explained. For example, one question asks if the work will be done in campus facilities. If the contractor is an electrical engineer working on a computer system, obviously the work has to be performed in campus facilities and this information should be annotated on the checklist. On the other hand, the fact that a larger number of

factors indicate an Independent Contractor relationship is not necessarily determinate of the issue. An individual classification should be made based upon the preponderance of the evidence.