

POLICY

Worker Classification: Employee vs. Independent Contractor

ISSUED ON 07/1/2013

LAST REVISED ON 06/27/2013

This policy applies to: All departments, centers, and schools, and any situation involving an individual who will perform work or services for the University as a non-employee.

I. Policy

This policy establishes the policy and process for assessing whether an individual performing work or services for the University is properly classified as a University employee or as an independent contractor. Appropriate categorization of an individual as an employee or independent contractor is essential for taxation and other insurance purposes in order to prevent the University from incurring significant tax penalties and other liabilities. In all cases, assessment of an individual's proper worker classification status must be made, pursuant to the process set forth below, prior to the individual beginning any work for the University.

II. Guidelines

The determination as to whether an individual acts as an employee of the University or an independent contractor is highly fact-based. However, as a general rule, an individual performing services for the University is to be regarded as a University employee, whether the service is full-time, part-time, time-as-reported, regular or temporary, unless it is clearly demonstrated and determined, through a detailed assessment, that the relationship is appropriately categorized as a true independent contractor. Any doubts as to whether an individual is an employee or an independent contractor should be resolved in favor of finding an employer-employee relationship.

A. An Employer-employee relationship typically exists when:

1. An employee of the University (a supervisor) controls when, where, and how the individual performs tasks and services and/or supervises how the individual performs those tasks and services;
2. The University provides tools, facilities, equipment and supplies to the individual;
3. The University sets the individual's hours of work;
4. The University sets the individual's rate of pay;
5. The University requires the individual to attend training sessions and/or meetings (unless the individual is employed by a third party contractor and the training is required as a term of the contract between the University and the contractor);
6. A University employee evaluates the individual's performance;

7. The individual must seek permission for absences;
8. The University has the right to hire, fire, and discipline the individual

B. An independent contractor relationship may be found if:

1. The individual performs work for the University with a substantial amount of independent judgment and the individual is largely free of supervision, direction, and control over his/her duties (*i.e.*, the individual's method of performing the work is not supervised by a University employee);
2. The individual has an established business that he/she independently markets, has other clients, and derives a substantial part of his/her income from sources outside the University;
3. The individual pays his/her own expenses;
4. The individual provides all of his/her own equipment and supplies;
5. The individual sets his/her own schedule;
6. The individual sets or negotiates his/her own rate of pay;
7. The individual is free to refuse offers of work from the University.
8. The individual has the ability to assign his/her own employee(s) to perform the tasks contracted for and/or the right to subcontract aspects of the contracted for work.

C. Other important considerations in determining whether an individual is an employee or an independent contractor include:

1. The fact that an individual is willing to sign an agreement with the University stating that he/she is an independent contractor does not necessarily mean that he/she is an independent contractor. An individual who otherwise should be categorized as an employee may not waive his/her rights as an employee and call him/herself an independent contractor simply because that is his/her preference.
2. Individuals who will be retained to perform duties or services that are substantially similar to duties or services performed by current University employees should be characterized as employees. In essence, individuals who provide services relating to the University's core mission, such as teachers, lecturers, instructors, and researchers, and individuals having administrative oversight of University finances always should be classified as employees. However, physicians who are retained for an occasional consult who have their own independent medical practice (i.e., non-URMC) and are not University faculty generally are independent contractors (unless the requisite control and supervision exists to qualify as an employee).
3. Current employees who perform services for the University different from their regular job will generally remain in an employer-employee relationship and will be paid as an additional appointment or through extra compensation (reference Policy #211 (<https://www.rochester.edu/policies/policy/additional-work/>)) if PAS (exempt) or for all hours worked if hourly-paid (non-exempt). Former employees will generally be hired back as full-time, part-time, time-as-reported (TAR) or temporary employees.

III. Procedures

A. All actions necessary to engage an independent contractor or to hire an employee must be approved *prior to* offer and commencement of services, and must be processed at least three weeks before services are required. More time may be needed for sign-off and posting requirements or if a background check may be required (e.g., if services to be performed by independent contractor will involve work with minors).

B. The Departmental Administrator for the department planning to engage the services of the independent contractor must first complete an Initial Assessment Questionnaire entitled “[Independent Contractor or Employee \(https://www.rochester.edu/adminfinance/urprocurement/consultants-independent-contractors/\)](https://www.rochester.edu/adminfinance/urprocurement/consultants-independent-contractors/)?” and also ask the individual to complete Parts I and II of the [Independent Contractor Determination and Certification Form \(https://www.rochester.edu/adminfinance/urprocurement/consultants-independent-contractors/\)](https://www.rochester.edu/adminfinance/urprocurement/consultants-independent-contractors/) in order to make a determination as to whether the individual will be classified as an employee or an independent contractor.

C. More detailed guidance for determining appropriate classification is available on [Purchasing and Supply Chain’s web site \(https://www.rochester.edu/adminfinance/urprocurement/\)](https://www.rochester.edu/adminfinance/urprocurement/) including a limited list of types of work that have been pre-determined as appropriate for independent contractor classification and for which the Initial Assessment Questionnaire and IC Certification Form will not be required. Also, staff in the Employment Center, Purchasing and/or a Human Resources Business Partner can provide assistance in the assessment process (with additional consultation with the Office of Counsel as needed).

D. If the determination from the assessment in II.A is that the person should be classified as an employee, the Administrator should proceed by contacting Human Resources. For a temporary assignment or project, a department may wish to hire a temporary employee through Strong Staffing.

E. If the determination from the assessment in II.B is that the individual should be classified as an independent contractor, the Administrator must complete Part III of the IC Certification Form and complete a Professional Services Agreement (<https://www.rochester.edu/adminfinance/urprocurement/consultants-independent-contractors/>) (“PSA”) which includes the service provider’s name and address, describes in detail the services and scope of work to be performed, the contract start and end date, etc., which then must be signed off on by the independent contractor and the appropriate University representative. A Business Associate Agreement also will be required if the individual will have access to protected health information.

Once the Professional Services Agreement is fully executed (and accompanying Business Associate Agreement if access to protected health information is involved), the Administrator will need to submit the following documentation to University Purchasing along with a request for a Purchase Order:

- i. The completed Initial Assessment Questionnaire and IC Certification Form;
- ii. A fully executed Professional Services Agreement;
- iii. A fully executed Business Associate Agreement (if required);
- iv. A W-9 (or other appropriate) tax form;
- v. A Certificate of Insurance listing the University as an insured (if required).

NOTE: A Purchase Order will not be issued without these completed documents. If Purchasing determines that Purchase Order is not needed, the above documentation will be forwarded to Accounts Payable for processing.

See also:

- [#133 Recruitment and Selection \(https://www.rochester.edu/policies/policy/recruitment-selection/\)](https://www.rochester.edu/policies/policy/recruitment-selection/)
- [#211 Additional Work and Additional Compensation \(https://www.rochester.edu/policies/policy/additional-work/\)](https://www.rochester.edu/policies/policy/additional-work/)

ABOUT THIS POLICY

Policy Number

122

Policy Group

Human Resources

Issuing Authority

Human Resources

Responsible Officer

Kathy Miner

Contact Information

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RELATED POLICIES

[Additional Work and Additional Compensation \(https://www.rochester.edu/policies/policy/additional-work/\)](https://www.rochester.edu/policies/policy/additional-work/)

Recruitment and Selection (<https://www.rochester.edu/policies/policy/recruitment-selection/>)

POLICY KEYWORDS

Recruiting (<https://www.rochester.edu/policies/all/?filter%5Btopics%5D=536>)

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