



Guidance on	Independent Contractor Guidelines for Federal Tax Purposes
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UC Independent Contractor Guidelines for Federal Tax Purposes

I. SUMMARY

The purpose of this Guideline is to provide a summary of the criteria used to determine a worker's status under Internal Revenue Service (IRS) common law standards and details the penalties imposed by the IRS for the misclassification of workers as independent contractors. To assist in the determination of a worker's correct status for tax purposes, a compilation of IRS rulings and a Classification Worksheet are included as Exhibits.

These Guidelines address federal tax compliance only. There are other state and federal laws regarding classification of workers as independent contractors or employees.

II. DEFINITIONS

Employee: A person who meets the IRS classification as an employee as described in Section VIII.A of this Guideline.

Independent Contractor: An independent contractor relationship exists when the University has the right to control only the result of the service, not the manner of performance.

Independent Consultant: An independent consultant relationship exists when the University does not control either the result of the service or the manner of performance. An independent consultant is not employed by the University and is typically a person of professional or technical competence who provides advice to the University. Independent consultants are a kind of independent contractor.

III. BACKGROUND

University purchasing procedures may not be used in lieu of placing an individual on the payroll. An individual or entity may only be retained for personal or professional services as an independent contractor if a determination has been made, in accordance with the law, that an employer-employee relationship does not exist (See Section V. below).

- A. Exhibit A:** contains the University Policy on the Use of Independent Contractors by University Extension.
- B. Exhibit B:** contains examples of IRS rulings related to employee versus independent contractor determinations.
- C. Exhibit C:** Classification Worksheet for Federal Tax Purposes

IV. TAX WITHHOLDING AND REPORTING

The University has no obligation to withhold income or FICA taxes on amounts paid to an independent contractor. However, if an independent contractor does not furnish a correct Taxpayer Identification Number (TIN), (e.g., Social Security Number or Employer Identification Number), or does not certify that the TIN is correct, the backup withholding rules require that income tax be withheld at a rate of 24%.¹

If payments in the aggregate to an independent contractor total \$600 or more during a calendar year, and the contractor is not a corporation, payments must be reported on IRS Form 1099-MISC, Miscellaneous Income. University Accounting Manual Chapters T-182-27, Taxes: Federal Taxation of Aliens, and D-371-77, State Tax Withholding from Nonwage Payments to Nonresidents of California, contain information on tax reporting and withholding for vendor payments made to nonresident aliens and nonresidents of California.

See University Accounting Manual Chapter D-371-12.1, Disbursements: Accounting For and Tax Reporting of Payments Made through the Vendor System, for a list of tax codes used to indicate the tax status of vendor payments.

V. INDEPENDENT CONTRACTOR SERVICES PROVIDED BY EMPLOYEES

Business and Finance Bulletin BUS-43, Purchases of Goods and Services; Supply Chain Management, outlines special limitations and requirements regarding independent contractor relationships with current or former employees or near relatives of employees.

A. Tax Reporting

Invoices must contain the following information:

- Purchase order number;

¹ Effective January 1, 2018 through December 31, 2025; P.L. 115-97 (H.R.1) and IRC Section 3046 (a)(1)(D).

- Remit to address;
- Payment terms;
- Description of service; and
- Period of performance (it should be so stated if the invoice is a progress billing).

As provided in the University Accounting Manual Chapter D-371-12.1, Disbursements: Accounting for and Tax Reporting of Payments Made through the Vendor System, independent contractor payments to employees should be tax coded as follows:

Tax Code²	Payment Type
8a)	Vendor check payments to employees reportable on Form W-2
8b)	Payments to employees reportable on Form 1099-MISC (see Section VIII.E., Dual Status Workers, below). ³

B. Coding

Campuses may establish local codes provided that they payments are accounted for and taxes are reported. University Accounting Manual Chapter P-196-11, Payroll: Accounting For and Tax Reporting of Deductions and Insurance Benefit Contributions provides information concerning payments of additional compensation to members of the faculty.

If a non-employee who is performing independent contractor services becomes an employee but continues to perform independent contractor services, the payments for those services should be tax coded as follows:

Tax Code	Payment Type
2)	Payments for personal or professional services to non- employee independent contractors prior to achieving employee status
8a)	Payments for personal or professional services to non- employee independent contractors following the achievement of employee status.
8b)	Payments to contractors reportable on Form 1099-MISC who later become employees receiving payments reportable on Form W-2 (see Section VIII.C., Dual Status Workers, below). ²

² Campuses may establish local codes provided that the payments are accounted for, and taxes are reported.

³ Payments to employees reportable on Form 1099-MISC for independent contractor services should be rare. Campuses should contact UCOP Payroll Coordination & Tax Services if there are any questions.

VI. USE OF INDEPENDENT CONTRACTORS BY UNIVERSITY EXTENSION

The policy memorandum in **Exhibit A** provides guidelines for determining whether individuals retained for temporary personal services in connection with University Extension courses and programs should be hired as employees or retained as independent contractors. The guidelines apply to the following:

- Course or program instructors hired for short and long duration;
- Guest lecturers; and
- Panelists or workshop participants.

The Classification Worksheet for Federal Tax Purposes (**Exhibit C**) is not required to be completed for individuals retained to provide temporary services as instructors of short duration (e.g., not to exceed twelve (12) calendar days in one calendar year), guest lecturers, and panelist or workshop participants. However, the Classification Worksheet for Federal Tax Purposes, which addresses the specific IRS classification factors outlined in this Guideline, must be completed for an instructor who is retained to teach a course of longer duration (see Section VIII.F., Making a Final Determination, below).

VII. MISCLASSIFICATION OF WORKERS

It is important to determine the correct classification of workers as employees or independent contractors. This distinction is significant because an incorrect determination could result in the following:

- Loss of reimbursement under federal contract and grant funds;
- Penalties for violation of State and federal tax withholding laws (see Section VIII.F., IRS Penalties, below);
- Penalties for violation of federal laws pertaining to the employment of aliens (Form I-9).

In addition, the following employment-related requirements may be violated:

- [State Oath of Allegiance](#), as required by the California Constitution;
- [State Political Reform Act](#), financial conflict of interest rules.

VIII. DETERMINATION OF EMPLOYEE/INDEPENDENT CONTRACTOR STATUS

A. Background

Under the Internal Revenue Code, employers are required to withhold income and FICA taxes on wages paid to employees. The IRS and the courts define the term employee for purposes of these withholding requirements as any individual whose employment status meets the common law requirements for an employer-employee relationship.

Generally, under common law if an employer has the right to direct and control the work of an individual who performs the services, not only as to the results to be accomplished but also as to the methods and means by which the results are accomplished, an employer-employee relationship exists. In this respect, even if the employer does not exercise the right to direct or control the manner in which the worker performs the services, the fact that the employer retains the right to do so is sufficient.

On the other hand, if the individual is subject to the direction or control of another person only as to the end result, not as to the methods and means used to accomplish that result, the individual is not an employee. If the employer does not control either the manner of performance or the result of the service, the individual is not an employee and an independent consultant relationship exists.

B. IRS Employee Classification Factors

The factors that the IRS takes into account in making employee/independent contractor determinations are set forth in a 1996 internal IRS training manual. The training manual focuses on the common law “direction and control” test as the primary test in making employee/independent contractor determinations and focuses on three areas that must be examined in making such determinations -- evidence showing behavioral control, evidence showing financial control, and evidence demonstrating the relationship between the parties.

Behavioral control primarily involves training and providing instructions to the worker. The training manual includes a detailed description of the different types of instruction that can constitute appropriate evidence that behavior-related direction and control is present. For example, if a worker is instructed to obtain approval before taking certain actions, he or she is likely to be classified as an employee. But the manual distinguishes between instruction as to what is to be done and instruction as to how it is to be done, with only the latter type of instruction reflecting employee situations. For example, assume that an independent truck driver receives a call from a manufacturing company to make a delivery in a certain part of the United States. When he picks up the cargo for delivery, the company gives him an address at which the cargo should be delivered and tells him that the delivery must be completed within two days. This is an instruction as to what is to be done, rather than how it is to be done, and is consistent with independent contractor status.

Financial control over the worker relates to the business aspects of the relationship, and the question to be asked is: “Does the recipient have the right to direct and control business-related means and details of the worker’s performance?”

Evidentiary aspects that are important include whether the worker (1) has made a significant financial investment in the business activity (indication of independent contractor); (2) receives reimbursement for the business expenses incurred (indication of employee); (3) provides the same or similar services to other members of the general public (indication of independent contractor); (4) receives a salary, flat fee, or commission (salary indicates employee; flat fee/commission indicates independent contractor); and (5) has the opportunity for personal profit or loss from the activity (indicates independent contractor).

The final category of direction and control evidence -- the relationship between the parties -- relates to how the two parties perceive their own relationship and includes such items as whether (1) the employee receives employee-type benefits, such as vacation days, sick days, and health insurance; (2) a written contract exists and sets forth the worker's duties and the terms and conditions of the contract; (3) the relationship is expected to be a permanent one; (4) the worker can be discharged at any time without incurring a penalty; and (5) the worker's activities are part of the regular business activities of the employer.

The training manual also sets forth various less-important factors used in making worker classifications, including whether the individual works part-time or full-time, whether the employment is temporary, the location where the worker conducts his or her activities, and the hours that the individual is required to work.

C. Dual Status Workers

The IRS recognizes that an individual may perform services for a single business in two or more separate capacities. A dual status worker performs one type of service for a business as an independent contractor, but performs a different type of service for the business as an employee. Such services must be separate and distinct, (e.g. there can be no interrelation either as to duties or remuneration in the two capacities).

Even though the IRS has in some cases recognized that an individual can be properly classified as both an employee and an independent contractor – and the 1996 training manual recognizes that such a dual worker status may exist – the IRS reviews these situations quite closely. Therefore, if an individual receives a Form W-2, Wage and Tax Statement, from a college or university, the IRS normally will assume that all income paid to the individual by the college or university is earned as an employee, and it will be up to the school to demonstrate to the contrary. And, as a general rule, if an individual conducts teaching services in an employee capacity, all other teaching activities will likewise be treated as employee services. For example, if a full-time professor teaches an out-of-town seminar, the IRS normally will assert that the income should be reported on a W-2 along with his or her regular faculty salary. The IRS also takes the position that if two individuals have the same job description (e.g., both are professors), but one works full-time and one works part-time, both should be considered employees.

On the other hand, if you can clearly show that the employee's independent contractor work is unrelated to his or her compensation or evaluation as an employee, the IRS should permit dual worker classification. And certain types of payments received by employees are reportable on a Form 1099 (e.g., damage payments, royalties, rental payments, or payments for bona fide independent contractor services) (see Section V., Independent Contractor Services Provided by Employees).

D. IRS Penalties

If an employer treats services performed by an employee as though they were performed by a non-employee, the IRS penalty assessments against the employer could include the following:

1. Penalty for Improper Classification (I.R.C. Section 3509, Determination of Employer's Liability for Certain Employment Taxes)

The general rule is that the employer is liable for all the taxes the employer would have owed and all the taxes the employer should have withheld from the employee and paid to the government. However, Section 3509 provides for less severe consequences:

The rate for failure to withhold income tax is 1.5% of the wages, doubled to 3% if the employer failed to file Form 1099 for the misclassified independent contractor;

The employer remains liable for its share of FICA and for 20% of the employee's unpaid FICA taxes, doubled to 40% if the employer failed to issue Form 1099.

2. Penalty for Failure to File Returns (I.R.C. Section 6651(a)(1), Failure to File Tax Return or to Pay Tax)

A 5% penalty for failure to file applies when an employer fails to file a return on the due date and there is a tax due. The penalty is based on the amount required to be shown on the return minus any part of the tax that was paid on or before the due date. Another 5% penalty is charged for each additional month, or fraction thereof, during which the failure continues; however, the penalty may not exceed 25% in the aggregate.

3. Penalty for Willful Failure to Collect Tax

A penalty, equal to 100% of what the contractor should have paid in taxes, for an employer's willful failure to withhold from a non-corporate independent contractor's pay, if the contractor failed to pay income taxes.

E. Section 530 Safe Harbor Defense

1. Safe Harbor Rules

The safe harbor rules of Section 530 of the Revenue Act of 1978 (and subsequent modifications) provide employers with relief from the taxes and penalties detailed in Sections VI., Misclassification of Workers and VII.F., IRS Penalties, above. Under these rules, an individual will be deemed not to be an employee for purposes of income and employment taxes if all three of the following conditions are met:

- i. The employer had a reasonable basis for treating the worker as an independent contractor;
- ii. The employer treated workers performing similar services as independent contractors; and

- iii. All Federal tax returns filed by the employer have consistently treated the independent contractor and all workers in similar positions as independent contractors.

An employer has a reasonable basis for not treating a worker as an employee if it relied on any of the following:

- i. Judicial precedent, published rulings, technical advice or a letter ruling issued to the employer;
- ii. A past IRS audit of the employer in which the IRS did not assess employment tax deficiencies for amounts paid to individuals holding positions substantially similar to the position held by the worker whose status is being questioned⁴; or
- iii. Long-standing recognized practice of a significant segment of the industry in which the worker is engaged, i.e., 25% or more of an industry for 10 years.

Even if an employer is unable to satisfy any of the above three requirements, the reasonable basis requirement may be met by demonstrating, in any manner, a reasonable basis for not treating the worker as an employee.

2. Applicability of Section 530 to the University

Due to the fact that there are conflicting rulings regarding the applicability of Section 530 to government agencies and instrumentalities, there is some uncertainty as to whether Section 530 relief is available to a governmental entity such as the University.

F. Making a Final Determination

In order to ensure that individuals performing services for the University are properly classified, the Classification Worksheet for Federal Tax Purposes, which is based on the foregoing IRS classification factors, should be completed prior to hiring a worker as an independent contractor. Alternatively, a Classification Worksheet for Federal Tax Purposes, which has been developed locally to address a specific group of workers, may be used instead.

In general, the determination regarding employee versus independent contractor status is made by each location according to local policy. However, in cases where it is difficult to determine a worker's correct status the Human Resources Department or the Office of the President Payroll Coordination and Tax Services Office, in coordination with the Office of General Counsel, can provide assistance in determining whether an employer-employee relationship exists.

⁴ Applies only to an audit beginning prior to December 31, 1996. For audits that began after this date the taxpayer may not rely on IRS acceptances of its classification of a worker unless the audit included a specific examination of the classification of the worker at issue or one similarly situated.

IX. COMPLIANCE/RESPONSIBILITIES

It is the responsibility of the originating office to determine the correct status of workers in coordination with appropriate local office (e.g. Human Resources, Campus Counsel, and Purchasing) as needed.

It is the responsibility of the campus payroll office/UC Path to comply with the procedures for Federal income tax withholding and reporting, as specified in these Guidelines.

The Office of the Executive Vice President-Chief Financial Officer is responsible for all updates to these Guidelines.

X. REVISION HISTORY

This guideline is revised on January 17, 2018 replacing the BUS-77 that is being proposed for rescission. The important IRS rules regarding the classification of an employee versus an independent contractor contained in BUS-77 is retained in this new guidelines which addresses federal tax compliance only.

This guideline was also remediated to meet Web Content Accessibility Guidelines (WCAG) 2.0.

XI. EXHIBITS

EXHIBIT A



University of California
Office of the President
March 1, 2006

POLICY ON THE USE OF INDEPENDENT CONTRACTORS BY UNIVERSITY EXTENSION

University Extension frequently retains individuals for temporary personal services in connection with Extension courses and programs. In some cases, it is not clear whether individuals performing temporary services should be hired as University employees or retained as independent contractors. This distinction is significant because there are certain state and federal requirements that apply to employees but not to independent contractors. For example, State law requires all University employees to sign the State Loyalty Oath before beginning work. Federal and California labor laws also impose a number of benefit requirements on employers, e.g., employees must be covered by workers' compensation insurance, unemployment insurance, and short-term disability insurance.

In addition, the distinction between an employee and an independent contractor has income tax reporting and withholding implications. Under standards used by both the Internal Revenue Service (IRS) and the courts, the basic legal distinction between an employee and an independent contractor is that an employee is subject to the employer's right to direct and control the employee's work (whether such right is actually exercised), whereas an independent contractor is retained to render a specified service subject to the control of the principal only as to the end result of the work, rather than as to the means by which the result is accomplished. As a general rule, the IRS leans toward classifying University Extension instructors as employees rather than as independent contractors. However, whether an individual should be paid as an employee or as an independent contractor depends on the applicable facts and circumstances. UC Independent Contractor Guidelines for Federal Tax Purposes describes the IRS classification factors and other relevant criteria used in determining a worker's correct classification.

University administrators should use the following basic guidelines to help determine whether an individual who will provide services of a temporary nature to University Extension should be hired as an employee or retained as independent contractor:

1. University faculty and other academic appointees who provide teaching services to University Extension must be paid as employees regardless of the length of the course or program ([Academic Personnel Manual 663](#)). University employees who do not have academic appointments also must be paid for University Extension teaching services as employees per the [Policy Regarding Employee-Vendor Relationships](#).
2. Except as provided below, an instructor or other person who is in charge of a University Extension course or program must be hired as a University employee. This classification applies whether or not credit is associated with the course or program.
3. Individuals who are not University employees should be treated as independent contractors if they:
 - a. are to participate as a guest lecturer on one or more occasions in a University Extension course or program,
 - b. are to participate on one or more occasions as a panelist or workshop participant in a University Extension course or program,
 - c. are a panelist for a University Extension course or program that consists exclusively of one or more panel discussions, and
 - d. are retained as an instructor retained to teach a course or courses of short duration, provided that the total number of days that the person teaches does not exceed 12 calendar days in one calendar year. Each day devoted to teaching would count as one calendar day regardless of the number of teaching hours worked in any of those days.
4. An instructor who is retained to teach a course that exceeds 12 days must be hired as an employee unless he or she is either (i) a bona fide employee of a company or organization that provides similar teaching services to others, or (ii) operates an independent business that provides similar teaching services to others. The following factors support independent contractor status:
 - a. The individual will be providing more than de minimis services to other clients during the University engagement;
 - b. The individual appears to be operating a bona fide business (the individual is incorporated, has a taxpayer identification number, a business license, business letterhead, a separate business location, etc.);
 - c. The individual receives a flat fee for services performed vs. payment on an hourly basis;
 - d. The individual advertises his or her services to the larger community.

UC Independent Contractor Guidelines for Federal Tax Purposes contains additional criteria that bear on whether a University Extension instructor should be classified as an employee or an independent contractor.

University policy (Business and Finance Bulletin [BUS-63](#), Insurance Requirements and Certificates of Insurance) requires that individuals retained as independent contractors show evidence of adequate insurance coverage. Locations should contact the respective Risk Manager to determine appropriate levels of coverage for such individuals.

Questions concerning this policy should be directed to the Associate Vice President-Systemwide Controller.



EXAMPLES OF IRS RULINGS

The following cases provide examples of IRS determinations with respect to the classification of certain classes of workers (see below for information related to the authorities cited):

INSTRUCTORS/TEACHERS

Situation #1:

1) Instructor A:

A school offering courses of instruction for certain occupations in the airline industry engaged instructors, under an oral agreement, to teach on a part-time basis during hours that did not conflict with their regular jobs.

2) Facts of the Situation:

- a. The school decided which courses to offer and determined the requirements for each course.
- b. It advertised and offered the courses in its own name.
- c. The instructors performed their services in facilities provided by the school, were provided the materials necessary to teach, and were supervised and reviewed by the school.
- d. Fees for the courses were paid directly to the school
- e. An instructor could terminate his/her relationship with the school at any time. Conversely, the school could terminate the relationship if the instructor did not follow the curriculum.

3) IRS Ruling: The IRS ruled that the school exercised sufficient direction and control, not only as to what should be done, but as to how it should be done, to establish the existence of an employer-employee relationship (Rev. Rul. 70-308).

Situation #2:

1) Instructor B: A university engaged Adjunct Law Professors who practices or had practiced law as their primary careers.

2) Facts of the Situation:

- a. The adjunct professors were given guidance regarding academic standards, withdrawal procedures, grades, and student behavior.

- b. They received instructions on reporting requirements, faculty dress code, campus mail, and the use of university copy machines.
- c. They were instructed on the need for consistent course quality and on preparing syllabi for their courses.
- d. The university supplied adjuncts with supplies and materials necessary to teach the courses.
- e. The adjunct law professors did not have a significant investment in a business related to educational services.

3) IRS Ruling: The IRS noted that the fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship. The adjunct law professors, however, provided legal services, rather than educational services, to the general public. Accordingly, their status as practicing attorneys was not a factor indicating their status as independent contractors with respect to the educational services they provided to the university (PLR 8925001).

Situation #3:

1) Instructor C: Teachers instructing regular classes at a music conservatory performed services under two different arrangements, as noted below.

2) Facts of the Situation:

- a. **Group A:** Instructors of technical classes for a regular remuneration.
 - i. The instructors were required to spend designated hours instructing regular conservatory classes, conducting examinations, and performing other duties as occasionally required by the conservatory.
- b. **Group B:** Instructors of their own pupils in private lessons for the amount of tuition fees collected by the conservatory from the pupils, minus a specified percentage retained by the conservatory.
 - i. The conservatory furnished a studio for the teacher's use, included information about the teacher in its catalogue, registered the teacher's students, recorded lessons, and imposed and collected all tuition charges made by the teacher.
 - ii. The teacher agreed not to teach elsewhere within the vicinity without the consent of the conservatory and guaranteed that the portion retained by the conservatory would amount to a specified sum.
 - iii. The teacher could not be dismissed during the life of the contract but the conservatory could refuse to renew the contract upon its expiration.

3) The IRS Ruling: The IRS held that the teachers in **Group A** were employees because the conservatory had *sufficient right to direct and control the manner of performance of their service*.

However, the conservatory did not exercise, or have the right to exercise, the degree or direction and control necessary to establish an employer-employee relationship

over the teachers in **Group B**. Although the conservatory insisted upon the maintenance of certain musical standards, *it had no right of control over the manner in which the teachers conducted their private lessons or gave instruction*. The acceptance, refusal, or dismissal of pupils was determined by the teacher and no refunds of fees collected by the conservatory could be made without the consent of the teacher (Rev. Rul. 70-338).

MEDICAL SCENARIOS

Situation #1:

1) Hospital Workers: A radiologist, a physical therapist, and several physicians were treated by a hospital as independent contractors. Their contract with the hospital provided the following noted below.

2) Facts of the Situation:

- a. Minimum guaranteed compensation amounts, vacation and sick leave; payment of insurance premiums; maintenance, repairs, supplies, equipment, janitorial services, laundry services, personnel, and other support services; and
- b. The workers were required to devote specified amounts of time to their hospital duties.

3) The IRS Ruling: The IRS concluded that the workers were employees based on the following factors:

- a. The hospital exercised sufficient control over the workers to ensure the hospital's success or failure.
- b. The workers had no investment in the business of the hospital or the buildings and thus bore no risk of loss other than that ordinarily assumed by employees (in fact, they were contractually guaranteed a specific amount of compensation);
- c. The workers expended no money or effort to generate work, did not hire assistants or pay for their own offices or equipment;
- d. The workers had a continuing relationship with the hospital (some had contractually performed services there since 1988); and
- e. The workers did not perform similar services for others (PLR 9443002).

Situation #2:

1) Nurse: Licensed practical and registered nurses engaged in private duty nursing.

2) Facts of the Situation:

- a. Many registered and practical nurses hold themselves out to the general public as independent contractors, have full discretion and control over their professional activities, and are only subject to the direction and control of an attending physician.
- b. Some registered and practical nurses, however, are on the regular staff of a hospital, clinic, nursing home, physician, etc., work for a salary, and follow

prescribed routines during fixed hours when not available for private duty nursing,

- 3) The IRS Ruling:** While licensed practical nurses and registered nurses engaged in private duty nursing are generally considered to be independent contractors, in those cases where such nurses are on the regular staff of a hospital, clinic, nursing home, physician, etc., work for a salary, and follow prescribed routines during fixed hours when not available for private duty nursing, they are employees. (Rev. Rul. 61-196).

Situation #3:

- 1) Physician A:** A nonprofit corporation employed physicians under contract to provide medical services at its family health clinics.

2) Facts of the Situation:

- a. The hours the clinic was open were set by the corporation and the physicians agreed to work those hours deemed reasonable by the clinic.
- b. The corporation could require the physicians to comply with the rules and regulations of the clinic.
- c. The contract between the clinic and the physician could be terminated at any time, with or without cause, by the clinic or the physician.
- d. The corporation paid for the physicians' insurance, including their malpractice insurance.
- e. The corporation provided offices, facilities, medical equipment, personnel, supplies, utilities, accounting (including patient billing) and legal services.
- f. The physicians were paid a monthly salary based on a percentage of the gross fees collected from the physicians' (or their designees') patients. They were not paid for vacation or sick time or for leaves of absence.

- 3) The IRS Ruling:** The IRS concluded that although the physicians were skilled professionals and therefore performed their services with little direction and control, the corporation had the right to direct and control them to the extent necessary to establish an employer-employee relationship under the usual common law rules (PLR 9149001).

Situation #4:

- 1) Physician B:** A physician contracted with a hospital to act as its director of the department of Pathology.

2) Facts of the Situation:

- a. The hospital furnished the necessary space, equipment, facilities, and personnel required for the operation of the pathology department.
- b. The physician hired his/her associate and paid for his services, paid for his own malpractice insurance, had complete control over the work in the department, and was not subject to supervision in the performance of his services; however, he

was required to keep proper records and make periodic reports concerning the services rendered in the department.

- c. The technicians and secretaries employed in the department were employees of the hospital although their appointment was subject to the physician's approval.
- d. The physician received a stated percentage of the gross receipts of the department for his services as director, had access to the records of the department at all times, and was furnished with a monthly statement of his account. The rates for his services were set jointly by the physician and the hospital administrator.
- e. The physician also performed services for two other hospitals.

3) The IRS Ruling: The IRS determined that the physician was not subject to direction and control by the hospital to the extent necessary to establish an employer-employee relationship (Rev. Rul. 66-274).

Situation #5:

1) Physician C: A physician worked for a state university's student medical clinic on an *on-call* basis but maintained her own private practice outside the university.

2) Facts of the Situation:

- 1) The university directed the physician's work methods, supervised her performance, and provided all equipment, supplies, and office space.
- 2) The physician was paid on an hourly basis with no guaranteed minimum amount of pay or fringe benefits.
- 3) The relationship could be terminated at will by either party.
- 4) There was no opportunity for the physician to incur a gain or loss from the relationship.

3) The IRS Ruling: The IRS concluded that an employment relationship was present because the university exercised sufficient right to control and direct the physician, *not only as to the result to be accomplished but as to the details and means by which her services were accomplished* (PLR 9326015).

Situation #6:

1) X-Ray Technician: An x-ray technician worked at a state hospital on a part-time basis.

2) Facts of the Situation:

- a. The worker was required to perform the services personally and to adhere to State and Federal guidelines.
- b. He was instructed on the manner in which the work was to be performed.
- c. The hospital retained the right to change the methods used by the worker.
- d. The worker was paid an hourly rate, given on-the-job training, and furnished with all the necessary equipment and supplies by the hospital

e. The worker provided similar services for others; however, those services were not advertised or listed in the telephone directory.

- 3) The IRS Ruling:** The IRS ruled that the hospital exercised the direction and control over the worker necessary to establish an employer-employee relationship (PLR 9201033).

OTHER TYPES OF SERVICES

Situation #1:

- 1) Architect:** An individual was engaged under an oral agreement by a professional architectural company, on a project-by-project basis, to provide architectural services on the company's premises.

2) Facts of the Situation:

- a. The company furnished office and desk space, secretarial and telephone services, and all necessary materials and equipment.
- b. The individual was subject to the company's instruction regarding the manner in which the work was performed.

- 3) The IRS Ruling:** The IRS ruled that since the individual was subject to the company's supervision to the extent necessary for the successful completion of a particular project, she was an employee of the company for purposes of income and employment tax withholding (Revenue Ruling 74-412).

Situation #2:

- 1) Janitor:** An office janitor whose employment was changed by her employer from employee to independent contractor was later ruled by the IRS to be an employee of the company. The company provided the janitor with a written agreement which stipulated the following situation noted below.

2) Facts of the Situation:

- a. Payments were made on a monthly basis (all transportation expenses were reimbursed by the company);
- b. Workers' Compensation Insurance and all supplies and equipment were provided by the company;
- c. Cleaning was to be performed in accordance with a written cleaning requirements list which detailed 19 different services the janitor was required to perform and specified how often the services should be performed; and
- d. The relationship could be terminated by either party on 30 days written notice.

- 3) The IRS Ruling:** The IRS concluded that the company exercised, or retained the right to exercise, the degree of direction and control necessary to establish an employer-employee relationship. The company had the right to direct and control the janitor in the performance of services, not only as to what was to be accomplished

by the work but also as to the details, as indicated by the cleaning requirements list (PLR 9419020).

Situation #3:

1) Secretary A: A secretary was engaged to provide full-time services to the executive branch of a state government.

2) Facts of the Situation:

- a. The worker was given instructions on *what* she was supposed to accomplish and also *how* her job was to be performed.
- b. She was required to follow a schedule established by her superiors who retained the right to change her work method and to supervise her performance, indicating that not only the result but the method of accomplishing that result was controlled by the employer.

3) The IRS Ruling: The IRS ruled that she was employee because her supervisors controlled not only the result of what she was supposed to accomplish but how she was supposed to accomplish that result. (PLR 9201008).

Situation #4:

1) Secretary B: A company hired a person to work as a secretary-receptionist.

2) Facts of the Situation:

- a. All materials, equipment, and supplies used by the secretary in the performance of her services were provided by the company; the company controlled her schedule and directed the format and prioritizing of her work; services were required to be performed at the company's office; similar services were not performed for others; and the company retained the right to discharge the secretary at any time and she could terminate her services for the company at any time.
- b. The secretary was hired under a written contract stating that she was an independent contractor.

3) The IRS Ruling: In its determination, the IRS concluded that the company exercised its right to direct and control the secretary in the performance of her services not only as to what was to be accomplished but also as to the details of how to accomplish it, as indicated by the instructions she was given. Other determining factors included the fact that she had a continuous relationship with the company, she was not engaged in an independent business enterprise of providing secretarial services to the public, and she could not incur a loss. The fact that the parties entered into a contract classifying her as an independent contractor was irrelevant to the final determination. (PLR 9426023).

Situation #5:

1) Interpreter: A firm hired an interpreter, on an occasional basis, to provide English/Spanish translation during the course of classroom instruction provided by the firm.

2) Facts of the Situation:

- a. The interpreter was paid a fixed sum per day.
- b. The interpreter was expected to perform the services personally on the firm's premises, during the hours that the firm scheduled classes.

3) The IRS Ruling: The IRS found that the arrangement between the interpreter and the firm was one in which the interpreter was subject to the direction and control of the firm in the performance of her duties as an interpreter. Accordingly, the IRS ruled that an employer/employee relationship existed. (PLR 8701044).

Situation #6:

4) Student Interns: Students, who were common law employees of a Federal agency that sponsored summer internship programs, attended an internship program at a state university.

5) Facts of the Situation:

- a. The funding for the program was provided by the agency.
- b. The students' daily activities were supervised by the agency.
- c. The students were not charged tuition or fees and did not receive degree credits for participation in the program.

6) The IRS Ruling: The IRS ruled that for FICA and income tax withholding purposes the students were employees of the university, not the agency, because the university had control over the payment of wages (PLR 9439004).

SIGNIFICANCE OF IRS RULINGS

The relative significance of the rulings cited in the above examples varies, as follows:

Private Letter Rulings: Apply only to the parties involved and the particular set of facts covered. Although the IRS is not bound by these Rulings when dealing with a party other than the one to whom the Ruling was addressed, such Rulings are an indication of how the IRS may be *likely* to treat similar transactions or activities.

Revenue Rulings: Represent the official policy of the IRS; however, the courts generally do not recognize Revenue Rulings as having the force of law.

Since it is unlikely that all aspects of a particular ruling will be applicable in every case, each employee/independent contractor determination must be made on a facts and circumstances basis.

EXHIBIT C

CLASSIFICATION WORKSHEET FOR FEDERAL TAX PURPOSES

{Note: This worksheet addresses federal tax compliance only. There are other state and federal laws regarding classification of workers as independent contractors or employees. For example, to determine whether a worker is an employee for unemployment insurance purposes, please refer to the Employment Determination Guide issued by the State of California Employment Development Department (EDD), which is available at http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf. For more information on unemployment insurance, you may also consult the Accounting Manual Chapter T-182-77.5, Payroll: Unemployment Insurance, on the internal payroll site.}

INFORMATION ABOUT INDIVIDUAL

Sole Proprietor _____ Partnership _____ Corporation _____

Name _____ Name of Company _____

Campus _____ Department _____

If Foreign National – Country _____ Visa Type _____

MULTIPLE RELATIONSHIPS WITH THE UNIVERSITY

1. Is this individual on record as a current employee? Yes ___ No ___
If no, is it expected that the University will hire this individual as an employee following the termination of this service? Yes ___ No ___
2. Was the individual a University employee any time during the last year and did he or she provide the same or similar services while an employee? Yes ___ No ___

IRS CLASSIFICATION FACTORS

Before the University enters into a contract with an independent contractor, the following checklist must be completed to help determine whether an employer/employee relationship exists.

IRS Classification Factors	Yes = Employee	No = Contractor
Behavioral Control: Right to direct and control details and means by which worker performs services.		
1. Instructions. Will the University have the right to give the worker instructions about when, where, and how he or she is to do the job?	<input type="checkbox"/>	<input type="checkbox"/>
Financial Control: Right to direct and control economic aspects of the worker's activities.		
2. Significant Investment. Has the worker failed to invest in facilities (such as an office) used to perform services?	<input type="checkbox"/>	<input type="checkbox"/>
3. Payment of Expenses. Will the University pay the worker's business or travel expenses?	<input type="checkbox"/>	<input type="checkbox"/>
4. Services Available. Does the worker not make his or her services available to other employers?	<input type="checkbox"/>	<input type="checkbox"/>
5. Payment by Hour, Week, Month. Will the University pay the worker by the hour, week, or month rather than by commission or by the job?	<input type="checkbox"/>	<input type="checkbox"/>
6. Realization of Profit or Loss. Will the arrangement prevent the worker from realizing a profit or suffering a loss?	<input type="checkbox"/>	<input type="checkbox"/>
Relationship of Parties: Intent of parties concerning status and control of worker.		
7. Right to Terminate. Could the University terminate the worker at any time without incurring liability?	<input type="checkbox"/>	<input type="checkbox"/>
8. Regular Business Activity. Is the work to be performed part of the regular business of the University, such as teaching or research?	<input type="checkbox"/>	<input type="checkbox"/>
9. Written Contract. Will a written contract not be executed describing the worker as an independent contractor?	<input type="checkbox"/>	<input type="checkbox"/>
10. Employee Benefits. Will the worker receive any employee benefits?	<input type="checkbox"/>	<input type="checkbox"/>

EVALUATION OF CLASSIFICATION FACTORS

Areas That Support Employee Status

Areas That Support Contractor Status

(Use separate sheet, if necessary.)

DETERMINATION

Hire worker as an employee



Enter into contract with worker as an independent contractor



Consulted with HR



Consulted with Finance



Department Authorization

Prepared By _____

Date _____

If the department is requesting a contract with an independent contractor, please furnish a copy of this Checklist to procurement as a part of the request.