

Independent Contractor or Employee?

2016 Professional Development Institute



Colorado State University

Agenda

- What's the Difference?
 - Employee
 - Independent Contractor
- Before Work Begins
- IC Form Guidance
 - Independent Contractor & PERA Retiree



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Employer Obligations

- Federal and state tax and labor laws require Colorado State University to ensure that individuals who provide services are properly classified as an employee OR an independent contractor.
- Individuals should not be classified as IC and Employee, thus not be issued a 1099 and W-2 for same tax year
- Careful review of individual circumstances needed prior to work being performed.



What's the Difference?

Employee

- Anyone who performs services for you is your employee ***if you can control what will be done and how it will be done.***

Independent Contractor (IC)

- A person, business, or corporation that provides goods or services to another entity under terms specified in a written or verbal agreement



Three characteristics viewed by IRS:

- Behavioral Control – Whether or not CSU has a right to direct or control how the work is done through instructions, training, or other means.
- Financial Control – Whether or not CSU has a right to direct or control the financial and business aspect of the worker's job.
- Type of Relationship – How the workers and business owner perceive their relationship.



Behavioral Control

- Degree of instructions – More detailed more control
- Evaluation – Systems measure the details of how work is performed instead of end result
- Training – If business provides training on how to do the job more likely an employee, contractors do things their way
- Type of Instructions
 - When and where to do the work
 - What tools or equipment to be used
 - What workers to hire or assist with the work
 - What work must be done by a specific individual
 - What order or sequence to follow



Financial Control

- Significant Investment – Contractors often have large investments in the equipment they use. But some jobs might have resources invested but are still considered an employee.
- Unreimbursed Expenses – Ongoing fixed costs regardless if work is being done
- Opportunity for Profit or Loss – The possibility of a loss usually indicates a contractor
- Services available to the Market – Contractors are free to seek out other opportunities within the market place
- Method of Payment – Employee paid by hour or set schedule, contractor is usually paid a flat fee.



Type of Relationship

- Written Contracts – Even if a contract states that party is an independent contractor the IRS will use the other factors to determine the relationship.
- Employee Benefits – Usually only employees are eligible to receive benefits but a lack of benefits does not mean they are independent
- Permanency of the Relationship – Is the worker hired for an indefinite period of time or for a specific project or period.
- Services Provided as Key Activity of the Business – If a worker provides services key to the business activity the more control the business has over the individual



Employee

- CSU directs & controls the work (Behavior Control)
 - When, where & how the work is to be done
- Worker receives instruction & training from CSU (Behavior Control)
- Continuing relationship between worker & CSU (Relationship)
- Set hours of work (Behavior Control)
- Payment by time, not by job (Financial Control)
- CSU furnishes tools, equipment & supplies (Financial Control)
- Worker can terminate services at any time (Relationship)



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Independent Contractor (IC)

- Engaged in independently established trade (Financial Control)
- Offers services to multiple clients (Financial Control)
- Not providing services similar to CSU employee (Relationship Control)
- Not full-time or occurring on regular basis
 - Billed by job, not by hour (Financial Control)
- Free from CSU's control & direction (Behavioral Control)
- Furnishes knowledge, supplies, equipment & tools (Financial Control)
- Receives no training, supervision, or instruction from CSU (Behavioral control)



Colorado Code of Ethics Statute

(CRS 24-18-201)

- Prohibits state employees from having an interest in any contract made by them in their official capacity or by anybody, department, or board of which they are members or employees.
- A former employee may not, within six months following the termination of his/her employment, contract or be employed by an employer who contracts with a state department or any local government involving matters with which he/she was directly involved with during state employment.
 - Contracts with former CSU or State employees may require retirement plan contributions



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Current Employees

- Payment outside of normal base salary should be requested as supplemental pay
 - Careful consideration for non-exempt employees. May need to be paid overtime for work beyond 40 hours.
 - Approval before work is completed
- Students cannot be paid supplemental pay
 - Concurrent work assignment
 - Work hours on primary assignment
- International Students cannot be retained as ICs



Before Work Begins

Assess Need – Employee or IC?

- Where would I find someone to perform this work?
- Does someone at CSU provide this service?
- What is the duration of the task?
- What level of control is needed on how services are carried out?



Is the IC Classification Appropriate?

- No
 - Work must be performed by employee
- Yes
 - Complete IC form with selected individual
 - Send signed IC form to Accounts Payable (AP)
 - AP will review IC form to confirm status
 - If IC status is confirmed, department can establish contract and create Vendor in Quali
 - IC's are paid via the Disbursement Voucher or Purchase Order



Form Guidance

- Found on BFS – AP webpage at <http://busfin.colostate.edu/ap.aspx>
- Not all cases are black and white so scrutiny and discussions may be conducted between AP and Payroll based on answers to questions on the IC form, prior to approval and start of work



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PERA Retirees as Independent Contractors

- Department responsible for PERA Retiree identification
- Monthly payments will be collected from the department to cover IC PERA Retiree contributions
- Payroll to process payments from same account used to pay the individual



Additional Considerations

- If individual is to be paid through payroll, they are an employee and we must comply with all required employment practices:
 - FLSA
 - I-9
 - Background check policy
 - Search/Hiring processes
 - Benefits



QUESTIONS?

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