



## SERVICE PROVIDER EVALUATION WORKSHEET

- This worksheet must be completed by the individual needing a service provider in concert with the applicable HR personnel **PRIOR** to hiring or processing through Purchasing.
- Do NOT submit this worksheet to the service provider.
- Do NOT complete this worksheet until after the service provider has returned a completed Service Provider Questionnaire. Provide a copy of the Service Provider Questionnaire to the Human Resource Personnel reviewing this form.
- Attach a brief description of services in your own words.
- Included in this worksheet is guidance provided by the IRS and DOL to help with the determination and classification as employee vs. independent contractor, which is designed to assist you in evaluating the relationship between the service provider and the University of Pennsylvania.
- If the service provider you wish to hire or contract with is a current University Employee, he or she must be paid as an employee and not as an independent contractor.
- An independent contractor will not be reimbursed for travel expenses via the CONCUR system. These fees must be included as part of the service provider's invoice to the University, if allowed by the terms of the engagement. Any payment of such fees by the University will be included in the total earnings reported at calendar year-end.
- **Once the answer to a question below is "TREAT AS AN EMPLOYEE," no further questions need to be addressed. Continue the process for employment with your School or Center Human Resource Manager.\***

Submission Date: \_\_\_\_\_

Name of the Service Provider being evaluated: \_\_\_\_\_

Name and Title of the individual who completed this form: \_\_\_\_\_

Name of School/Center and Department or Unit: \_\_\_\_\_

Name of Human Resource Personnel reviewing this form: \_\_\_\_\_

Name of Responsible Business/Finance Administrator reviewing this form: \_\_\_\_\_

**\*employment can be a temporary assignment as a temporary employee**

**IRS Common Law Test for determination and classification as employee vs. independent contractor is organized into three major categories:**

*Behavioral Control:* Who controls how the work is done?

<b>BEHAVIORAL CONTROL</b>	<b>EMPLOYEE</b>	<b>INDEPENDENT CONTRACTOR</b>
Instructions	An employer has the right to give an employee instructions regarding how, when and where the work is performed	The client has a right to specify the parameters of the deliverables; not the details of how, when and where the work is performed
Training	Employees are often trained to do their jobs	Independent Contractors are hired for their expertise and should receive no internal training

*Financial Control:* Who controls the business aspects of the worker's assignment?

<b>FINANCIAL CONTROL</b>	<b>EMPLOYEE</b>	<b>INDEPENDENT CONTRACTOR</b>
Significant Investment	Employers provide the tools and equipment necessary for their employees	Independent Contractors provide their own tools and equipment
Unreimbursed Expenses	Employees are reimbursed for any out-of-pocket business expenses they might incur	Independent Contractors pay their own business expenses
Marketing	Employees do not market their services to public	Independent Contractors market their services to the public
Method of Payment	Employees are paid based upon the passage of time—guaranteed return for his/her labor	Independent Contractors are generally to be paid upon the completion of specific deliverables
Opportunity for Profit/Loss	Employees generally have no opportunity for suffering a loss	Make business decisions which allow them to not only make a profit but also have the opportunity to suffer a loss

*Relationship of Parties:* Worker's and employer's/purchaser's type of relationship

<b>RELATIONSHIP OF PARTIES</b>	<b>EMPLOYEE</b>	<b>INDEPENDENT CONTRACTOR</b>
Intent of Parties	Expressed via employment contract; extent of direction and control the employer requires over the employee	Expressed in a contract between the two parties; Independent Contractor expresses his/her intent by fulfilling local and state requirements for business (i.e. securing business license, etc)
Employee Benefits	Employees are entitled to benefits such as vacation or sick time, health care benefits and ability to attend company sponsored events	Independent Contractor provides their own benefits
Termination	Within the confines of legal or contractual requirements employees can be discharged at will by the employer	Contracts can only be terminated according to the specifications of the contract. Non-performance on the part of the contractor or client can lead to legal recourse
Permanency of Relationship	Employer engages for indefinite period of time	Specific services are for limited period of time
Regular Business Activity	Employees perform services which are key aspects of employer's regular business activities	Independent contractors perform services which do not affect client's bottom line. (limited exceptions)

*DOL Economic Realities Test:* Determination and classification of an employee vs. independent contractor is based on these six factors:

ECONOMIC REALITIES TEST FACTOR	EMPLOYEE	INDEPENDENT CONTRACTOR
<p>1. Whether the work is an integral part of the employer's business. This factor is "compelling" per the DOL. Integral work includes:</p> <ul style="list-style-type: none"> <li>• any work that is part of the mission of the University (e.g. education, research, and health care)</li> <li>• work that is already performed by University employees in the normal course of business</li> <li>• work that is regular and ongoing.</li> </ul>	<p>If the work is integral, it is more likely that the worker is economically dependent on the employer</p>	<p>If the work is not integral, it is less likely that the worker is economically dependent on the employer</p>
<p>2. Whether the worker's managerial skills affect the opportunity for profit or loss.</p>	<p>Has no opportunity to increase profit except by increasing hours</p>	<p>Hires others; purchases materials and equipment for the job; advertises; rents spaces; manages time tables</p>
<p>3. The relative investment of the worker and the employer</p>	<p>Worker is economically dependent on payments from the University.</p>	<p>Worker is NOT economically dependent on payments from the University.</p>
<p>4. Whether the work performed requires special skills and initiative.</p>	<p>The DOL does not consider specialized skills unless they indicate that a worker is in business for himself/herself</p>	<p>The DOL only considers business skills, business judgment and business initiative as relevant to independent contractor status</p>
<p>5. Whether a working relationship is permanent or indefinite.</p>	<p>Permanency or indefiniteness suggests the worker is an employee</p>	<p>Independent contractors are not permanent and should not have an indefinite term</p>
<p>6. The nature and degree of the employer's control</p> <ul style="list-style-type: none"> <li>• This factor should be analyzed in light of the ultimate determination of whether the worker is economically dependent on the employer</li> </ul>	<p>Controlling one's hours, working at home, and having little supervision are common for employees</p>	<p>An independent contractor controls meaningful aspects of the work performed, and must conduct his or her own business</p>

## SECTION I: INDICATE THE RESPONSE

CURRENT RELATIONSHIP WITH THE UNIVERSITY OF PENNSYLVANIA	YES	NO
1. Does this individual currently work for the University, the Health System or any of its entities?	TREAT AS EMPLOYEE	GO TO #2
2. Has the individual ever been on University payroll in either a regular or temporary appointment?	GO TO #3	GO TO #4
3. Will the individual provide services substantially similar to those provided during his/her prior employment and under substantially similar direction and control?	TREAT AS EMPLOYEE	GO TO #4
4. Are Penn employees currently performing substantially similar services? (NOTE: justification of specific need of Independent Contractor can be submitted for review.)	TREAT AS EMPLOYEE	GO TO #5
5. Will the University hire this individual as an employee providing substantially similar services following the termination of his/her services as an independent contractor?	TREAT AS EMPLOYEE	GO TO #6
6. Is the individual a retiree of the University or Health System?	CONTACT HR	GO TO #7
7. Is the individual a student of the University of Pennsylvania?	CONTACT SRFS	GO TO #8
8. Is the individual providing the services outside of the United States?	CONTACT GSS/TIO	GO TO #9
9. Is the individual a foreign national?	CONTACT HR	GO TO SECTION II

## SECTION II: INDICATE THE RESPONSE

Classification Guidelines: Complete only <b>ONE</b> sub-section, A, B, or C, depending on the services to be performed by the individual <i>PLEASE NOTE: These are factors in considering whether to hire an individual as an employee. Consult with your Human Resources Manager for further guidance.</i>		
A. GUEST LECTURER/SPEAKER	YES	NO
10. Is this individual a 'guest lecturer', E.G. an individual who lectures at only one or two class sessions, conferences or event per year?	STOP – FORM NOT REQUIRED; SEE LIMITED ENGAGEMENT AGREEMENT	GO TO #11
11. Is the individual the primary instructor of record for the course being offered for academic credit toward a University degree?	TREAT AS EMPLOYEE	GO TO #12
12. Is the individual responsible for the content of the Lecture/Presentation?	STOP – FORM NOT REQUIRED; SEE LIMITED ENGAGEMENT AGREEMENT	TREAT AS EMPLOYEE

<b>B. RESEARCHER: RESEARCHERS HIRED TO PERFORM SERVICES FOR A UNIVERSITY DEPARTMENT OR UNIT ARE INITIALLY PRESUMED TO BE EMPLOYEES OF THE UNIVERSITY.</b>	<b>YES</b>	<b>NO</b>
13. Will the individual perform work using University Facilities (as opposed to facilities available to him/her outside the University)?	TREAT AS EMPLOYEE	GO TO #14
14. Will the individual perform research for a University faculty member under an arrangement whereby the University faculty member serves in a supervisory capacity (i.e. the individual will be working under the direction of the University faculty member)?	TREAT AS EMPLOYEE	GO TO #15
15. Will the individual serve in an advisory or consulting capacity with a University faculty member or director in a “collaboration-between-equals” type arrangement?	GO TO # 16	TREAT AS EMPLOYEE
<b>C. OTHER INDIVIDUALS NOT COVERED UNDER SECTION A OR B</b>	<b>YES</b>	<b>NO</b>
16. Does the individual routinely provide the same or similar services outside of the University of Pennsylvania to the general public as part of a continuing trade or business?	GO TO #20	GO TO #17
17. Will the department provide the individual with specific instructions regarding performance of the required work beyond specifying parameters of the deliverables rather than rely on the individual’s expertise?	TREAT AS EMPLOYEE	GO TO #18
18. Will the department provide the individual with significant equipment or supplies and/or hire assistants for the individual?	TREAT AS EMPLOYEE	GO TO #19
19. Will the University set the number of hours and/or days of the week that the individual is required to work, as opposed to allowing the individual to set own work schedule?	TREAT AS EMPLOYEE	GO TO #20
<b>D. ECONOMICS REALITIES TEST</b>	<b>YES</b>	<b>NO</b>
20. Is the work an integral part of the employer’s business?	TREAT AS EMPLOYEE	GO TO #21
21. Do the worker’s managerial skills present the opportunity for profit or loss for the worker?	GO TO #22	TREAT AS EMPLOYEE
22. Is the worker’s investment in their business significant in nature?	GO TO #23	TREAT AS EMPLOYEE
23. Does the work being performed require specialize skills and initiative?	GO TO #24	TREAT AS EMPLOYEE
24. Is the worker relationship permanent or indefinite?	TREAT AS EMPLOYEE	GO TO #25
25. Is the worker’s control over the project significant in nature?	TREAT AS INDEPENDENT CONTRACTOR	TREAT AS EMPLOYEE

**University Employees Cannot Be Paid As Independent Contractors**

In almost every circumstance, University employees are not allowed to receive independent contractor type payments.

Based on the Common Law Test, the following categories of workers will be considered employees not Independent Contractors while performing services for the University:

- University of Pennsylvania faculty, students, and/or staff performing services for the University, regardless of the source of payment (i.e. departmental accounts, government grants, foundation funds).
- Any individual working as a tutor.
- Instructors employed by any department of the University, conducting workshops, classes, or seminars on University premises for any University department, with the exception of one-time payments to guest speakers/guest lecturers as defined above.

Human Resource Personnel determination (check one):

<input type="checkbox"/>	TREAT AS EMPLOYEE
<input type="checkbox"/>	TREAT AS INDEPENDENT CONTRACTOR

Authorizing Signature of Human Resource Personnel: \_\_\_\_\_ Date: \_\_\_\_\_

Authorizing Signature of Responsible Business/Finance Administrator: \_\_\_\_\_ Date: \_\_\_\_\_