Northwestern University
Individual Worker Classification Criteria – Employee or Contractor

Northwestern University has a legal obligation to follow IRS Rules to determine the appropriate worker classification. School/unit leaders are responsible for ensuring that all necessary documentation is accurately completed, and evaluation/classification is determined **before** any services are provided.

Individuals who perform services for the University are classified as employees by default and may be treated as independent contractors only when a clear, well-documented, and substantiated justification supports that classification**.**

Employee: An individual engaged by the University in an employment relationship in which the University directs the duties performed, the work schedule, and the work location. The University provides the tools and resources required for the role, and the individual does not assume financial risk or profit based on performance. Compensation is issued through the University's payroll system, and wages are reported on a W-2 form.

Independent Contractor: An individual who is engaged to perform a specific service not readily available from within Northwestern University. These individuals are not employees and are paid through Accounts Payable and receive IRS Form 1099. Relevant factors in determining whether an individual is an Independent Contractor include whether:

- The service is offered to other customers and clients besides the University;
- Ther service is outside of the University's usual course of business;
- The University exercises minimal control or direction with respect to how, when, and in what manner the service is provided.

Misclassification of workers can result in significant penalties for both the university and the individual. Worker classification must be determined through an objective evaluation of the facts and circumstances in each case, based on the criteria established by the Department of Labor, rather than the preferences of the unit or the individual.

Frequently Asked Questions:

Can an individual waive their right to be considered an employee and opt to be a contractor?

A worker cannot give up employee status by signing a contract or waiver. The law requires that specific, objective criteria be met for someone to be treated as an independent contractor; if those criteria aren't satisfied, the person is legally an employee regardless of what any agreement says.

Are the IRS common law test factors weighed differently when determining whether a worker is an employee or an independent contractor?

No. Under the IRS Common Law Test, there is no "magic" or set number of criteria that must be met, and no one factor stands alone in making the determination. Some factors may indicate that the worker is an employee, while others indicate the worker is an independent contractor. An

employer must weigh all the factors when determining whether an individual is an employee or an independent contractor. The general rule is that an individual is an independent contractor if the University has the right to control or direct only the result of the work, not what will be done and how it will be done. The more control the business has over the individual, the more likely that individual will be classified as an employee and not an independent contractor.

What are the penalties for misclassifying employees as independent contractors?

Misclassifying a worker can require the employer to repay back wages, overtime, and the value of any benefits the individual should have received, and may also result in back taxes, interest, and financial penalties.

Can current faculty, staff or students be independent contractors?

Individuals who are currently employed by the University—or were employed at any time in the same calendar year—cannot be engaged as independent contractors**.** When the services needed match or closely resemble the duties of a current employee, the individual must be paid as an employee rather than as an independent contractor.

Does the determination of employee versus independent contractor apply to grant funded professional services?

Yes, the same factors and process are required regardless of funding source.

Can a former employee be an independent contractor?

A former employee **is** generally not eligible to be engaged as an independent contractor to perform services that are the same or substantially similar to the work they performed as an employee, particularly when the services occur in the same calendar year**.** When the work is materially different, a former employee may be classified as an independent contractor only if they are no longer receiving wages from Northwestern. Any such engagement must be carefully reviewed to ensure proper worker classification, as the individual would receive both a W-2 and a 1099 in the same tax year, which is reported to the IRS and may trigger additional scrutiny.