

Supplier vs Employee

In very general terms, the difference between an employee and an independent contractor is based on the level of control that the University has over the individual or entity at issue. A high level of control is indicative of employee status. Facts that provide evidence of control and independence tend to fall into three categories:

1. Behavioral: Does the University control how the party performs its work?
2. Financial: Does the party assume any financial risk associated with the relationship?
3. Type of Relationship: How long will the University have a relationship with this party, and how much time will the party devote to performing the work? Are there written contracts?

The following questions are intended to break down these broad considerations in greater detail. If the majority of the answers are "yes," this suggests that the individual is an employee.

Is the individual subject to the department's instructions as to when, where and how to work?

- Does the Department set the hours and location of work?
- Is the individual required to comply with instructions from the Department, or a does a Departmental employee act as a supervisor?
- Are there employees in the Department performing very similar or the same tasks?
- Are the tools, technology or equipment used provided by the Department rather than brought on site by the individual?
- Does the Department provide training to the individual?
- Does the individual work full time exclusively for the Department (as opposed to performing similar services for other organizations besides the University)?
- Does the Department dictate what order or sequence is to be followed to reach the expected end result?

Is the individual subject to the department's financial control?

- Does the Department pay the individual hourly, weekly or monthly (as opposed to on a project basis)?
- Does the Department pay an individual person (as opposed to a company or LLC represented by the individual)?
- Is the individual reimbursed for expenses, such as mileage or supplies?
- Does the individual work primarily in his or her capacity as an individual (as opposed to making him or herself available to the relevant market via advertising, working for other employers, maintaining a visible business location)?

What type of relationship has been established with this individual in the past, or is expected to be established in the future?

- Does the Department provide, or intend to provide, the individual with benefits, including insurance or sick and vacation time?
- Is the individual working for the Department for an indefinite period of time (as opposed to only until completion of a specific project or end date)?
- Are the services provided by the individual a key aspect of the Department's regular business?
- Is the individual someone who has a continuing relationship with the University?
- Is the individual a present or former employee of the University, employed in doing the same or similar tasks as he or she performs/ed during employment with the University?
- Does the individual have the right to terminate the relationship or quit at any time without any contractual repercussions?
- Does the Department have the right to discharge the individual without any contractual repercussions?

If the answers to these questions do not establish a clear conclusion, or if the analysis is particularly difficult, the Office of Faculty and Staff Labor Relations is available to assist