

# GRAND VALLEY STATE UNIVERSITY

## Contractual Services

### Independent Contractor vs Employee

The Internal Revenue Service (IRS) governs the resolution of whether an individual has the status of an independent contractor or employee. The resolution of whether an individual has the status of an employee is determined under common law rules. The following 20 questions help to determine whether an employer-employee relationship exists. Contact Procurement Services at 331-2280 for questions regarding independent contractor vs employee relationship.

1. Do you provide instructions? A person who is required to comply with instructions about when, where and how he/she is to work is ordinarily an employee.
2. Do you provide training? An independent contractor ordinarily uses his/her own methods and receives no training.
3. Do you integrate the person into the workplace? The more integrated, the more likely the worker is an employee (i.e. serving on a committee or task force).
4. Is the service being performed by a person or company? One indicator that the person might be an independent contractor is if they possess an employer identification number rather than a social security number.
5. Will the person be hiring, supervising and paying assistants? This factor examines whether the worker manages or supervises employees of the organization or has any authority to hire or fire staff members.
6. Do you have a continuing relationship? A continuing relationship with the person for whom services are performed indicates that an employer-employee relationship exists. If the arrangement contemplates continuing or frequently recurring work (even on irregular intervals), the relationship is considered permanent, even if the services are performed part-time, seasonal, or of short duration.
7. Do you set the hours of work? Establishment of set hours of work bars the worker from being master of his/her own time, which is the right of the independent contractor.
8. Is service required full-time? An independent contractor is free to work when and for whom he/she chooses. If the worker must devote his/her full-time to the business of the employer, it is more likely that he/she is an employee.
9. Is work performed on employer's premises? This factor implies control, especially when the work could be done elsewhere. The use of desk space, computer, telephone and clerical services, or an e-mail account provided by an employer places the worker within the employer's direction and supervision.
10. Do you set the order or sequence of work? If a person must perform certain tasks at certain times, he/she is not free to follow his/her own pattern of work. If the employer does not set the order of the services but retains the right to do so, he/she can still be considered to have control.

11. Do you require oral or written reports? If a person must prepare and/or present regular reports, this is some evidence that the worker might be considered an employee.
12. Will the person be paid by the hour, week or month? Payment made by the job generally indicates that the person is an independent contractor (even if computed by the number of hours required to do the job at a fixed rate per hour). The payment of regular amounts at stated intervals to a worker strongly indicates there is an employer- employee relationship.
13. Will the person be paid for business and/or traveling expenses? A person who is paid on a job basis and who has to take care of all incidental expenses, if free to work according to his/her own methods and means, is generally an independent contractor.
14. Do you furnish tools and materials? The more that an organization provides the tools and materials necessary to have the work performed, the greater the chances an employee-employer relationship exists.
15. Does the person have significant investment? A person's lack of investment in facilities used in performing services for another, such as equipment, premises, office furniture and machinery, indicates independence on the employer and hence the existence of an employer-employee relationship.
16. Could the person realize a profit or loss? The person who can realize a profit or suffer a loss as a result of his/her services is generally an independent contractor, but one who cannot is an employee.
17. Does the person work for more than one firm at a time? A person who works for a number of firms or businesses at one time is generally an independent contractor.
18. Are the person's services available to the general public? A person who makes his/her service available to the general public is usually not an employee.
19. Do you have the right to discharge? An independent contractor cannot be fired except under the terms of the contractual termination clause.
20. Do you have the right to terminate? An employee has the right to end his or her relationship with the employer at any time without incurring liability. An independent contractor works pursuant to and is approved by the terms of the applicable contract and may be legally obligated to make good for failure to provide the contacted-for services.