

INDEPENDENT CONTRACTOR
WHEN, WHY
AND WHAT TO DO



OVERVIEW

- What is an Independent Contractor?
- What is an Employee Consultant?
- Why are we here?
- I have an Independent Contractor.
Now What?
- I have an Employee Consultant.
Now What?
- Forms
- Questions?



WHAT IS AN INDEPENDENT CONTRACTOR?

- Self Employed in an independently established trade, occupation, profession or business
- Free from employers' control
- Can be paid more than employees
- Can take increased business deductions
- Must pay self employment taxes
- Services rendered are not an integral part of the employers business



WHAT IS AN INDEPENDENT CONTRACTOR?

CONTINUED

- Contractors must have opportunities for profit or loss beyond the normal loss of salary
- Must be autonomous and possesses initiative, judgment, or foresight in open market competition with others.
- Typically a short term relationship
- Contractor's investment in facilities and equipment



WHY ARE WE HERE?



The IRS estimates that one in seven U.S. employers is guilty of misclassifying some of its employees, resulting in a loss of more than \$4.1 billion a year in tax revenues.



RISKS OF MISCLASSIFICATION



- Taxes not withheld or paid and related penalties The IRS can demand a penalty of 20% of what ought to have been withheld, plus 1.5% of wages.
- Unpaid unemployment insurance payments and workers' comp premiums
- Headlines
 - Microsoft (\$97m settlement)
 - Freedom Communications (\$42m settlement)
 - UPS (\$12.8m settlement)
 - Mega Builders fined \$328,500 for misclassifying 18 ICs
 - DOL, IRS Coordinate on Employee Misclassification Compliance (Sept. 2011)
 - IRS Announces *Voluntary Classification Settlement Program* IRB 2011-41 (Oct. 2011)



IRS RED FLAGS

- Formerly an employee –now an IC
- Same work or work typically assigned to employees
- “Production” work
- Restrictions on IC’s ability to work for other businesses
- Direct reimbursement of business expenses



**HOW DO I KNOW IF I HAVE AN
INDEPENDENT CONTRACTOR OR AN
EMPLOYEE CONSULTANT?**



DETERMINATION

- Complete Independent Contractor Request (ICR) form located at <http://www.emich.edu/controller/index.php>
- Forward completed ICR to EMU Office of Controller located at 202 Hover OR scan and email to dcelian@emich.edu
- Employee Consultant (EC) or Independent Contractor (IC) status will be determined



REMINDER



- If vendor is Incorporated, an Institute, an LLC or DBA (must have registered SSN or TIN), please follow normal Purchasing processes.



IF DETERMINATION IS IC

- Controller will send requesting Dept the approved ICR with “next step” instructions
- Dept will execute contract with vendor according to current Purchasing procedures and forward executed contract (ICA), with W9 or W8-Ben to Purchasing or Accounts Payable (depending on frequency and amount)



IF DETERMINATION IS IC CONTINUED

- IC status will be entered into the Banner system and vendor ID will be issued.
- Dept will forward all invoices and Statement of Work documents to A/P for payment
- Subsequent engagements with same vendor will only need statement of work documents and invoices. New requests, W9 or contracts are not needed unless vendor information or type of work changes.



REMEMBER!



- Purchase Order is required if;
 - Total contract is greater than \$5,000 OR
 - Contract is to be paid out in multiple payments (more than one)

- Payment Card or Direct Pay may be used if;
 - Total contract is less than \$5,000 AND it is a one time only payment.
 - Payments should be made only after services are rendered



IF DETERMINATION IS EMPLOYEE CONSULTANT

- Controller will forward request to Human Resources and the requesting Department with link to Additional Compensation Request and Employee Consultant Agreement.

- Once approval signatures are obtained Department will forward packet to HR.



IF DETERMINATION IS EMPLOYEE CONTINUED

- HR sends documents to Payroll for payment
- Subsequent work with same individual will only require a *PAF/Compensation Request* and, if necessary, updated contract for processing



IF YOU THINK WORKER HAS BEEN MISCLASSIFIED

- Contact Controllers office
 - Doris Celian
202 Hover
7-3328
dcelian@emich.edu
- You will be asked to complete the IRS SS-8
- Vendor will submit SS-8 form to IRS for determination and include determination letter with ICR.
- If worker performs any duties while determination is being made, the worker must be classified as an employee.



FORMS

- Independent Contractor Approval Request (ICR)
- W-9
- W-8BEN
- Independent Contractor Agreement
- Statement of work
- Direct Pay

Located at –

<http://www.emich.edu/controller/forms.php>

SS-8

Located at -

<http://www.irs.gov/pub/irs-pdf/fss8.pdf>



FORMS - CONTINUED

- Compensation Request
- I9
- Employee/Consultant Agreement

Located at -

<http://www.emich.edu/hr/hrforms/index.html>





QUESTIONS?

