

EMPLOYMENT VS. CONTRACTED SERVICES GUIDELINES FOR DETERMINATION OF EMPLOYMENT STATUS

Background

Whether or not an employee-employer relationship exists is significant for both the University and the individual providing services. Where there is an employee-employer relationship, the employer is required to withhold income tax, Canada Pension Plan (CPP) contributions and Employment Insurance (EI) premiums from employment income. If the University does not fulfil these obligations and it is found that the individual is an employee, the University would be subject to penalties as a result of failing to comply with the Income Tax Act.

- As a general rule, it should be presumed that if an individual has an employment relationship with the University, that any work done is part of the existing employment relationship unless there is compelling evidence to the contrary.
 - If the person providing the services is a full-time employee of the University (whether academic or non-academic), it is difficult to justify anything but employment income. If the person is a staff member, the likelihood of an independent relationship is very small and any remuneration should be paid through a Staff Appointment Notice (SAN) with the appropriate statutory deductions being taken. If the person is a faculty member, the employment relationship may be more difficult to determine.
- The terms and conditions of the University governing appointments documents (e.g., collective agreements) together with the nature of the University's business dictates that individuals who teach a course from which students may receive academic credit will always be classified as employees.

Departmental Accountability

- It is the department's responsibility to ensure that appropriate evidence has been gathered to support the position that the University has engaged an independent contractor. Any penalties that may result from the failure to withhold statutory deductions will be charged to the department. **Units should contact a Human Resources Consultant (Staff Relations) at extension 82194 or Faculty Relations at extension 83723 for more specific guidance.**
- It will be required for any individual where payment is being requisitioned for a contract for service, that appropriate approvals and documentation verifying that there is no employer/employee relationship is submitted to Human Resources for approval with the NCNER.

- If the department cannot provide sufficient evidence to support a finding that an individual providing a service is an independent contractor, the individual must be employed in accordance with the University's hiring practices.
- Should an individual disagree with her/his status as determined by this process, s/he has the option of completing a Revenue Canada CPT-2 form. The purpose of completing this form is to obtain a ruling from Revenue Canada as to whether he is an employee for the purposes of the Canada Pension Plan and/or is in insurable employment for the purposes of the *Employment Insurance Act*. This form is available from Revenue Canada.
- **Conflict of Interest** - Employees that either:
 - a) have a relationship with an individual who has an interest in a company that does business with the University, or;
 - b) operate a company themselves that does business with the University,

must declare a conflict of interest prior to any transaction taking place. There must be an operating agreement completed by the employee that is signed by themselves and the Dean or department head and the Director of Purchasing. These operating agreements are maintained by Purchasing. If the individual is an employee, regardless of the operating agreement, the order is referred to Human Resources to determine if there is an employee/employer relationship. Lack of a valid, up-to-date operating agreement may have significant consequences for an employee who has not declared a conflict of interest (see MAPP policy 3.4).

Determining Status: Employment vs. Contracted Services

Four tests should be applied in the determining whether an employee/employer relationship exists:

- i. Control
 - ii. Specific results
 - iii. Risk of profit/loss
 - iv. Integration
- i. Control:*** This test looks at the degree of control the University has over the person performing the service. Does the University determine where or how the work is done? What kind of reporting relationship with the University exists? Generally, an employment relationship exists where the employer has the right to direct what the individual does, how it is done and where it is done.
 - ii. Specific Results: Does*** the individual have to supply the services personally for a fixed or indeterminate time period, or can the individual sub-contract the work? If the work can be subcontracted, then the individual is an independent contractor. If not, then an employment relationship may exist. The more control over the

work of the person the University has the ability to exercise, the greater the likelihood the contract is one of employment.

- iii. Risk of Profit or Loss:** Is there a chance for profit or loss to the individual providing the service other than what they are being paid? Is there a significant investment in facilities and equipment by the individual or does the University provide office space, facilities, equipment and staff? Does the individual provide similar services to other organizations? The absence of the potential for profit or loss may indicate an employment relationship. The greater the potential for profit or risk that is borne by the University, the greater the likelihood the contract is one of employment.
- iv. Integration:** Is the work an integral part of the normal activities (teaching, research, etc.) of the University? Are the services provided by the individual similar to those provided by an employee of the University? If yes, this implies an employment relationship could exist. The more that the work being done is part of the University's core business, the greater the likelihood the contract is one of employment.

It is important to note that the existence of a written (or oral) contract does not have a bearing on whether an employee/employer relationship exists. The contract must be viewed independently to determine what criteria the relationship is based upon.

Procedure: Determination of Method of Payment

1. Appendix A must be completed in determining if an employee/employer relationship exists. This form must be signed by the Chair or budget unit head and the contractor to verify that an employee/employer relationship does not exist.
2. If it is determined that an individual has been hired on a contract for services and is not an employee, the questionnaire along with the contract for services verifying that an employer/employee relationship does not exist will be sent to Human Resources for processing and payments. All payments require the approval of the Director, Human Resources or designate. Chart A indicates the method of payment (NCNER, purchase order or Staff Appointment Notice).

Once the questionnaire has been completed and it has been confirmed an employee/employer relationship does not exist, the questionnaire does not have to be completed again when products or services are provided by the same business or individual under the same terms and conditions.

3. For incorporated businesses, payments are made by purchase order submitted with the attached questionnaire to the Purchasing Department with all applicable documentation (e.g., contract for services, GST registration number). It is important to note that prior to the selection of a business, competitive bids may be required before a Purchase Order can be issued. Contact Purchasing at extension 82038 for further information.

Use the following chart to assist in determining whether a situation involves employees or independent contractors. This can be further verified after completing the questionnaire of Appendix A.

<i>Type of Service Provided</i>		<i>Employee</i>	<i>Independent contractor</i>	<i>Payment method</i>
Teaching	Current employees providing teaching services covered by the governing appointments documents (e.g., UWOFA collective agreement)	/		SAN (T4)
	Guest lecturer - see definition		/	NCNER (T4A)
	Non-routine courses and seminars - UWO employee or individual performing teaching that is not part of the normal employment responsibilities, not related to day to day academic programs, not for credit, or not covered under the terms of the governing appointments documents e.g., UWOFA collective agreement (Continuing Studies teaching)	/		SAN (T4)
Non Instructional Services	Current employees performing work that is part of the normal course of duties under an existing employment contract.	/		SAN (T4)
	An individual's time is at the disposal of the University for a fixed or determinate time. Factors to consider: Have set hours, works at the University, provided supplies and equipment.	/		SAN (T4)
	Current employees performing work outside of the normal course of duties and beyond the terms of the existing employment contract. Factors to consider: is work optional; is work done away from the University; pays own expenses.		/	NCNER (T4A)
	Business or individuals paid a fee to provide specified products or services, e.g., consulting services, statistical analysis. Factors to consider: is work done away from University; does business or individual pay own expenses.		/	P.O. (Invoice)
Research	Current employee engaged in research as part of responsibilities or normal course of duties under an existing employment contract.	/		SAN (T4)
	Current employee provided with remuneration from externally funded research agreement. The research is not carried out in the normal course of duties under an existing employment contract.		/	NCNER (T4A)
	Research project personnel engaged in research under the direction, guidance or supervision of a UWO principal investigator and are not students carrying out research related to degree requirements. Factors to consider: appointed for a fixed period of time, regularly engaged in research at the University; receives regular payments, provided with supplies, equipment, office space, e-mail account, etc.	/		SAN (T4)
	Individuals engaged in independent research, or provided with a sub-grant from funded research to carry out a specified research activity. Factors to consider: does not provide general assistance to a principal investigator; provided with a lump sum sub-grant; pays own expenses.		/	NCNER (T4A)

APPENDIX A

**The University of Western Ontario
Questions to Consider to Determine if an Employee-Employer Relationship Exists**

1. What services were provided?
 - Is the work being performed related to research and/or teaching? Yes_ No_
 - Is the service being provided associated with instructing in a degree program? Yes_ No_
2. Does the University currently employ the individual? Yes_ No_
 - If the person is an employee, how does the work being performed relate to the employee's regular work duties?
3. Is the individual employed full time by another university or organization? Yes_ No_
4. Does the individual have a business license or professional designation? Yes_ No_
(e.g., CA, LLB, PEng)
5. Has the individual provided services similar to those being provided to the University for other customers as an independent contractor during the past twelve months? Yes_ No_
If yes, list:
6. Does the individual pay for office space outside their home or claim the use of their home office as a business expense? Yes_ No_
7. Does the individual advertise their services to the public? Yes_ No_
8. Does the individual pay their own employees? Yes_ No_
9. Does the individual perform a substantial portion of the services at the University premises? Yes_ No_
10. Does the university provide any necessary materials, supplies, stationery, telephone, secretarial support, business forms, tools, equipment, and similar items to complete the engagement? Yes_ No_
11. Does the University provide training, supervision, or instruction on how (i.e., methods used) to complete this engagement? Yes_ No_
12. Does the University set priorities in terms of time, effort, and hours of work? Yes_ No_
13. Does the University provide any of its employees to assist in completing the engagement? Yes_ No_
14. Was payment based on an hourly, weekly or annual basis, as opposed to completing the specific task? Yes_ No_

'Yes' answers to questions #3 – 8 & 'No' answers to questions #2 & #9 – 14 may indicate that an individual is an independent contractor rather than an employee.



APPENDIX B**ISSUING PAYMENTS TO INDIVIDUALS**

What is the payment for?	How is the payment initiated?	Where do you send the document?	Additional Information
Guest Lecturer	NCNER Code: Z005	Human Resources	Professionals usually engaged by departments to speak on academic and research topics to a specific audience. This is different from part-time lecturers who are considered employees. Factors that may indicate an individual is a Guest Lecturer are: <ul style="list-style-type: none">• No ongoing responsibility to attendees;• No marking or grading responsibility;• No appointment with the university;• University has little control over the content of the lecture other than with respect to the topic;• No office facilities or support staff provided;• Lecturer paid a single fee for giving the lecture.
Royalty Recipient	NCNER Code: Z007	Human Resources	Royalties are paid for the use of, or for the right to use, in Canada any property, invention, trade name, patent, trademark, design or model, plan, process.
Scholarship	NCNER Code: Z009	Human Resources	Amounts paid (or benefits given) to students to pursue their education. These scholarships are awarded because of academic merit and therefore, their receipt does not usually require a commitment of completion of specified work. Can be awarded to any level of student, however they are most often awarded to an undergraduate student.
Honorarium Recipient	NCNER Code: Z002	Human Resources	A payment made to an individual in recognition of voluntary participation in a program or activity, e.g., keynote speaker. The amount is usually a nominal amount.

What is the payment for?	How is the payment initiated?	Where do you send the document?	Additional Information
Living Allowance	NCNER Code: Z004	Human Resources	A payment to a student or researcher to repay for amounts spent in continuing their education or carrying out research.
Award Winner	NCNER Code: Z010	Human Resources	A prize can be considered to be an award to a particular person selected from a group of potential recipients and is given for something that is accomplished. The criteria for awarding the prize must be such that a recipient is rewarded for success in an area in which the recipient regularly applies effort.
Reviewer/Examiner	SAN		According to the CAUBO Tax Guide, this should be employment income.
Entertainer	Cheque Requisition	Finance	Payments for performing artists.
Services provided by an Employee	SAN or FAN	Human Resources	<p>An individual who performs work for an employer under a contract of services.</p> <ul style="list-style-type: none"> • See the attached guidelines for determining employment status.
Services provided by an independent contractor where the payment is made to an Individual.	<p>NCNER Code: Z001</p> <p>Complete the questionnaire, sign and forward to HR.</p>	Human Resources	<p>Practising members of professions offering their expertise to complete an assigned task on a non-repetitive project, typically in such fields as:</p> <ul style="list-style-type: none"> • The practice of law, medicine, engineering, architecture, or accounting. • Human resources consulting • Computer consulting • Management consulting <p>If individuals provide a <u>contract for service</u> in such areas of expertise, and where the University does not control the content or method of the work, but rather, simply describes a desired outcome, then the</p>

What is the payment for?	How is the payment initiated?	Where do you send the document?	Additional Information
			<p>individual may be an independent contractor. A <u>contract for service</u> is an arrangement whereby one party agrees to perform certain work stipulated in the contract for another party. It usually calls for the accomplishment of a clearly defined task, but does not require that the contracting party do anything himself.</p> <ul style="list-style-type: none"> • See the attached guidelines for determining employment status.
<p>Goods or services provided by an independent contractor where the payment is made to a Business Entity.</p>	<p>Purchase Order</p> <p>Complete the questionnaire, sign and forward to Purchasing.</p>	<p>Purchasing</p>	<p><i>Business Entity:</i> A company, which is incorporated and has limited liability. The name of the company ends with “Limited” or “Corporation”.</p> <p><i>Unincorporated business:</i> Businesses registered with the Ministry of Consumer and Commercial Relations. They do not have limited liability and are not recognized as a separate legal entity by Revenue Canada and the Income Tax Act. Alternatively, it is an individual who provides products or services outside of an employee/employer relationship.</p>