

# Changes to the Employee v Independent Contractor Policy

---

WHAT IT MEANS FOR YOU

# Agenda

---

1. Explain why we changed the policy
2. Define “Independent Contractor”
3. Describe new process

# Why did we change the policy anyway?

---

- TO IMPROVE OUR CLASSIFICATION PROCESS BASED UPON IRS INTERPRETATION OF OUR FORMER POLICY

# Why did we change the policy?

---

## UVM was selected for IRS audit

- Though good policies protected the university from penalties relating to most of what the IRS looked at...
- The IRS suggested improvements relating to how we categorize **employees v independent contractors**

# Why did we change the policy?

---

UVM chose to agree with the IRS interpretation

- Payments for people that should have been employees were subject to 10.68% tax
  - This amount would have been paid as employment tax if we had paid them correctly

# Why did we change the policy?

---

- Moving forward, UVM is bound by the agreement.
- If the IRS determines that another employee was paid as an independent contractor, those payments will be subject to penalties, fines and interest in addition to the tax.
  - Adds up to a **roughly 50% tax**
  - This tax will be charged back to **your budgets!**

What is the difference  
between an employee and  
an independent  
contractor?

---

# Employee v Independent Contractor

---

- There are certain types of workers who will always be an independent contractor:
  - Those with a W-9 (or W-8BEN-E) that proves the payee is not an individual
    - Note: a sole proprietor is treated the same as an individual
  - Freelancers
    - writers, graphic designers, photographers, etc.
  - SARE projects
  - NCAA America East referees



# Employee v Independent Contractor

---

- There are certain types of workers who will always be an employee:
  - Instructors, lecturers, teachers
    - Yes, even tutors and yoga instructors!
  - Researchers
  - Anyone responsible for developing curricula or course material for UVM
  - If there is a UVM employee doing this body of work

# Employee v Independent Contractor

---

- For everyone else, determining the difference is not always clear
- Less about “ticking off boxes”
- More about the nature of the relationship

# Employee v Independent Contractor

---

- The nature of the relationship is determined by analyzing the following factors:
  - Behavioral Control
  - Financial Control
  - Type of Relationship

# Employee v Independent Contractor

---

- These questions help us to understand the nature of the relationship
  - No single factor is the determining factor
  - If UVM has “control” over the worker, that person should be categorized as an employee

# Behavioral Control

---

Behavioral Control refers to whether UVM has control over how the worker does the job.

# Behavioral Control

---

Does UVM dictate what hours the worker works?

Does the worker work “full time” or its equivalent at UVM?

Does UVM train the worker on how to do the work?

Does the worker work on UVM premises?

Does the worker report to a UVM employee?

Does UVM have the right to determine in what order tasks (other than finished products) are to be completed?

# Financial Control

---

Financial Control refers to whether UVM has the right to control economic aspects of the worker's job

# Financial Control

---

Does UVM pay the worker on a regular basis (weekly, monthly, etc.) or by project?

Does the worker have their own liability insurance?

Does UVM reimburse the worker for their expenses?

Does the worker make their services available to the general public?

Does the worker use UVM equipment to perform the work?



# Type of relationship

---

Whether the facts and circumstances seem like an employee-employer relationship

# Type of relationship

---

Does the worker provide any sort of instruction (a key aspect of the university)?

Does the worker perform a function that is substantially similar to the work of any UVM employee?

Does the worker have access to UVM email or sensitive university information?

Does the worker do research (another key aspect of the university)?

Does the worker receive UVM employee benefits?

Has the worker been designated as an employee for this work in the past?

What is the new  
process?

---

# The New Process

---

Contact HR Rep to confirm whether the service provider is or has been employed by UVM

Obtain W-9 for the service provider

Complete the Electronic EIC Determination Form online

The Electronic EIC Determination Form will give you a determination

If the determination is "IC" attach the signed form to a requisition with Service Agreement

# The New Process

- Step 1: Contact your HR Rep to confirm current / prior employment
- Step 2: Obtain W9

<b>Name</b> (As shown on your income tax return)	MICKY MOUSE
<b>Business Name</b> (if different from above)	M & M Castle Builders
<b>Federal EIN OR Social Security #</b>	12-345678
Check only <b>ONE</b> federal tax classification: <input checked="" type="checkbox"/> Individual, Sole Proprietor or Single-Member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/Estate <input type="checkbox"/> Non-Profit Organization <input type="checkbox"/> Government Agency <input type="checkbox"/> Limited Liability Company* If you checked Limited Liability Company you <b>MUST</b> enter tax classification (C=C Corporation, S=S Corporation, P=Partnership) _____	

- If Individual / Sole Proprietor box is checked, proceed with Employee vs Independent Contractor determination

# The New Process

---

- **Step 3: Complete the new Electronic EIC Determination Form**
  - Once the EIC form is completed, you will be notified of your worker's determination
    - A copy of the form will be sent to Tax Administration to monitor for multiple submissions for the same person
- **Step 4: The EIC Form will provide a determination**
  - Work should not commence until a final determination is made and any necessary documentation is completed.

# The New Process

---

- Step 5A: If the EIC form determines your worker should be an employee...
  - You must go to HR to have the worker hired on as an employee
    - The hiring process has not changed
  - If you made a human-error mistake resulting in an incorrect determination, you can speak with Tax Administration for review
  - If you believe you filled out the form correctly and feel that the determination is incorrect, the Controller can request a determination from the IRS by filing [Form SS-8](#).

# The New Process

---

- Step 5B: If the EIC form determines your worker should be an independent contractor...
  - Complete a service agreement, if \$1,000 or more
    - If greater than \$5,000, agreement will require review by Purchasing contract specialist – Wendy Spargo.
  - **Or** complete a speaker engagement letter, if \$500 or more.
  - **THEN** create a requisition in PeopleSoft




# Service Description = 3-Way Match IC Form, Agreement, & Requisition

## DESCRIPTION OF SERVICES

Please provide a **detailed description of services as it would appear in the requisition description.** Should the worker be deemed an independent contractor, this text must match the requisition description or the requisition will be rejected.

What service is being provided, and for what business purpose? \*

Guest Speaker for "Stress-Free Workday" session on April 1, 2019 from 9am to 4pm in the Davis Center.



- ❖ The same information would be entered on a Speaker Engagement Letter.
- ❖ And added to the requisition in the "Description" field.
- ❖ Description needs to answer: what, where, when, and why/business purpose

### **NO-NO Examples for a description:**

Mickey Mouse speaking / Consulting Services / Professional Services

# The New Process

---

- Step 5B: If the EIC form determines your worker should be an independent contractor...
  - A copy of the EIC form must be printed, signed, and submitted along with the speaker engagement/service agreement, or the form will be rejected
  - Has anyone in the room signed an EIC form? If yes today or will be in the future – Be sure you have a delegation on file.
    - Departments keep on file for 7 years for audit purposes.

A completed [EIC form](#) supporting an Independent Contractor determination must be certified via signature by the unit or department's dean, director, chairperson, or authorized designee thereof (see [Departmental Delegation of Authority Letter](#)).

## DEPARTMENTAL DELEGATION OF AUTHORITY LETTER FOR EMPLOYEE VS. INDEPENDENT CONTRACTOR STATUS DETERMINATION FORM

By means of this letter, I, [Name], [Dean, Director, or Chair], delegate the authority herein described to [Designee Name], [Designee Position Title], on the following terms and conditions:

1. I delegate authority to [Designee Name], on my behalf, to formally sign departmental Employee vs. Independent Contractor status determination forms, with the understanding of the following responsibilities and certifications:
  - a. They are familiar with the services provided by the individual
  - b. They have reviewed the Employee vs. Independent Contractor Policy
  - c. They have confirmed with their Human Resources Representative the individual's employment status or history
  - d. An Independent Contractor Status classification is warranted

# The New Process

---

- Once the Service Agreement is fully executed and purchase order is issued by Purchasing, you **may** **then** bring the service provider onboard as an independent contractor.
- Everyone does it in this order, Correct? 😊

# The Electronic EIC Determination Form

---

- <https://www.uvm.edu/finance/forms/employee-vs-independent-contractor-determination-form>

# Frequently Asked Questions

---

# FAQs

---

What if we've categorized this person as an independent contractor for years?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**

# FAQs

---

What if the worker has asked to be categorized as an independent contractor?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**



# FAQs

---

What if the worker is funded by grant money?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**

# FAQs

---

What if we don't have money in the budget to pay the person as an employee?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**

# FAQs

---

What if the worker taught a class but only for a few weeks?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**

# FAQs

---

What if the worker wants to be paid as an independent contractor through their sole proprietorship?

**It doesn't matter! UVM is still legally obligated to follow these rules, and would pass that 50% tax on to you!**

# Helpful Links

---

[Employee vs. Independent Contractor Determination website](#)

[Employee vs. Independent Contractor Policy](#)

[Procurement or Lease of Goods or Services Policy](#)

[Service Contract / Speaker Agreement](#)

[Payroll & Tax Services](#)

[Purchasing Services](#)

[Disbursement Center](#)