

Independent Contractor vs. Employee

Overview

The classification of an employee versus an independent contractor by the College is an important distinction primarily for tax and liability reasons. If a worker is defined as an employee, then the College has a responsibility to:

- Pay state and federal unemployment tax, social security and Medicare taxes, and the state worker's compensation premiums.
- Provide appropriate health and retirement benefits
- Provide a W-2 (Wage and Tax Statement) at year-end, showing the amount of taxes withheld from pay
- Protect the worker under federal and state labor, employment, and discrimination laws

If a person is classified as an independent contractor, the College is generally not responsible for the aforementioned items. The College will provide a year-end 1099-MISC (Miscellaneous Income) form but it's the worker's responsibility (not the College's) for paying income tax, self-employment taxes, and deducting appropriate business expenses on its tax statements.

Should the College incorrectly define a worker as an independent contractor instead of an employee, the College may find itself liable for past taxes, potential penalties, litigation from private parties, lost wages and benefits, interest, and attorney fees.

Factors that Determine an Independent Contractor vs. an Employee

Applicable law defines "employ" broadly as "to suffer or permit to work." In order to make the determination whether a worker is an employee or an independent contractor, Union College considers the "economic realities" test, which focuses on whether the worker is economically dependent on the College or in business for him or herself. In other words, a worker who is economically dependent on the College is suffered or permitted to work by Union College and must be classified as an employee.

Consistent with U.S. Department of Labor guidance, Union College considers the following factors to determine whether a worker is an employee or an independent contractor under applicable law:

1. The extent to which the work performed is an integral part of Union College's business;
2. The worker's opportunity for profit or loss depending on his or her managerial skill;
3. The extent of the relative investments of the College and the worker;
4. Whether individual is engaged in a distinct occupation/business and whether special skills are required;
5. Whether work is done under direct/indirect supervision of a Union College employee;
6. The permanency of the relationship; and
7. The degree of control exercised or retained by Union College.

The College must consider all of these factors when determining whether a worker is an employee or independent contractor. There is no one single factor or a special combination of factors that make the determination. Each situation is treated differently, and factors may weigh differently in various situations. The entire relationship must be considered when making the final determination as to whether a worker is economically dependent on the College, and thus an employee.

How to Determine the Correct Relationship

The following form has been created to ask the appropriate initial questions in determining whether a worker can be hired as an independent contractor. The form should be completed in its entirety before any agreement or relationship is engaged in with the worker.

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The questions below help the College determine whether a worker should be classified as an independent contractor or employee. Please answer all questions and submit electronically to Eric Noll, Chief HR Officer (nolle@union.edu).

Union College Contact: [Click here to enter text.](#)

Department or Program: [Click here to enter text.](#)

Name of individual to be hired: [Click here to enter text.](#)

1. What work will be performed by the individual?

[Click here to enter text.](#)

2. Is the work performed by the individual integral to the College's business or a component of the business?

[Click here to enter text.](#)

3. Is there any material or information available that would help to demonstrate the independent contractor status of this individual (i.e. copy of business or professional license, copy of insurance certificates, copies of advertising of the individual's business, or business cards or stationery?)

[Click here to enter text.](#)

4. What is the individual's risk of profit or loss in providing services?

[Click here to enter text.](#)

5. Explain what, if any, investment(s) have been made by the individual that support a business as a business beyond the proposed job for Union College (e.g., vehicle, staff, equipment, supplies, advertising, etc.).

[Click here to enter text.](#)

6. Which resources (e.g. equipment, computer, space, tools, and services) will the College provide for the individual to complete the stated job and responsibilities?

[Click here to enter text.](#)

7. Will Union pay any expenses for this person?

[Click here to enter text.](#)

8. Does the work performed require the individual's business skills, special skills/training, judgment and/or initiative (Please explain)?

[Click here to enter text.](#)

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9. What is the nature and degree of Union College's control over the individual? (E.g., scheduling, quality control measures, setting compensation, ability to turn down or hire others to do work, etc.)

[Click here to enter text.](#)

10. Will the individual be considered a member of your department, be involved with department activities, or be provided any benefits that are typically provided to employees of the College? If so, please explain.

[Click here to enter text.](#)

11. Will the individual be directly/indirectly supervised or will they be working independently as a specialist making their own determinations about the quality and quantity of their work?

[Click here to enter text.](#)

12. Does the individual operate his or her own business or is engaged in similar work with other institutions or organizations? Will the individual have an exclusive contract with Union College? Please explain all known employment arrangements of the individual.

[Click here to enter text.](#)

13. How long will the arrangement with the individual last?

[Click here to enter text.](#)

14. Are there currently other employees at Union College that currently perform the tasks needed (please clarify how/why this is different)?

[Click here to enter text.](#)

15. If this individual currently or previously worked as an employee for Union College, how does the work that they will be doing differ from that which they were doing as an employee?

[Click here to enter text.](#)

DECISION:

Union College Representative: Eric Noll

Signature of Representative: _____

Date: _____



(518) 388-6108