

University of Guelph

Employment vs Contracted Services Guidelines for Determination of Employment Status

These guidelines have been established to determine the appropriate method of payment to individuals who provide services to the University of Guelph.

Individuals who perform work for the University and who are deemed to have an employee/employer relationship will be remunerated through the payroll system using the normal procedures. It is important to note that, because an individual has his/her own business or is employed by a business that provides services, this does not prove that an independent contractor relationship exists.

Your assistance in carefully observing the following guidelines will ensure that the University of Guelph remain in compliance with Canada Revenue Agency and other government requirements so that employees receive the appropriate statutory benefits that flow from a properly administered employment relationship.

Determining Status: Employment vs Contracted Services

The University uses four major factors to determine whether the terms and conditions of the work to be performed constitute an employee/employer or independent contractor relationship. This determination includes, but is not limited to, an assessment of four factors of the work relationship: control, specific results, chance of profit/risk of loss and organizational integration. It is important to note that one factor alone is not conclusive in determining whether an employee/employer relationship exists.

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 exists with the University? 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.

Specific Results: The specific result test examines the nature of the control. Is the individual paid to perform a specific task or to obtain a specific result or paid to put her/his personal service at the disposal of the employer for a period of time? If the contract provides for a specific result to occur but does not contemplate the services of any particular individual to accomplish that result, then the relationship may be one of self-employment. If, on the other hand, the contract requires the services of one person to be put at the disposal of another for a fixed or indeterminate time, the relationship may be that of an employee.

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 loss that is borne by the University, the greater the likelihood that the individual is an employee..

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 the work being done is part of the University's core business, the greater the likelihood that the individual is an employee. It is important to note that the existence of a written contract does not necessarily determine whether an employee/employer relationship exists. The contract must be viewed independently to determine

what criteria the relationship is based upon.

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 may be charged to the department. Departments can receive assistance in making the independent contractor determination by contacting their Human Resources Service Co-ordinator.

It will be required that appropriate approvals and documentation verifying that there is no employer/employee relationship be submitted to Accounts Payable. This documentation shall consist of the completed Relationship Questionnaire and Declaration appropriately signed.

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 employee hiring practices.

Should an individual disagree with his/her status as determined by this process, he/she has the option of completing a Canada and Revenue Agency CPT-1 form. The purpose of completing this form is to obtain a ruling from CRA as to whether he/she is an employee for the purposes of the Canada Pension Plan and/or is in insurable employment for the purposes of the Employment Insurances Act. This form is available at <http://www.cra-adrc.gc.ca/E/pbg/tf/cpt1/README.html>

Procedure:

1. The Relationship Questionnaire (RQ) must be completed prior to the start of the assignment/project to determine if an employee/employer relationship exists. This form must be signed by the Chair or budget officer 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 RQ along with the contract for services and a cheque requisition should be forwarded to Accounts Payable (for amounts less than \$1,500) or Purchasing for larger amounts.
3. For incorporated businesses, payments are made by purchase order submitted with the signed questionnaire to Purchasing with all applicable documentation (eg. contract for services, GST registration number). It is important to note that prior to the selection of a service provider, competitive bids may be required before a Purchase Order can be issued. Contact Purchasing at extension 56412 for further information.

Relationship Questionnaire - to be completed by the Individual and the Department

For each question on the RQ, circle the applicable answer in Column A or B. The "University of Guelph" refers to the department and supervisor responsible for the work being done. If the majority of the answers circled are "NO", this will likely indicate an employee/employer relationship. If the majority of answers circled are "YES", an independent contractor relationship will likely exist.

It is important to note that the final and legally enforceable determination of an employee/employer relationship rests with the courts and the application and interpretation of relevant legislation. Careful completion of these questions will minimize risk to both the University and the individual of penalties of non-compliance.

University of Guelph - Relationship Questionnaire

This questionnaire is to be completed by the prospective independent contractor prior to the commencement of the assignment/project. Its use is restricted internally to the University of Guelph and it is not to be used for any other purpose.

Part I - To be completed by the individual providing the service.

Name:	Phone:	Fax:
Mailing Address:	Email:	
	Postal Code:	

		A	B
1	Is it true that you are not an employee or former employee of the University of Guelph?	Yes	No
2	Is it true that your duties with the University of Guelph will not include conducting course lectures?	Yes	No
3	Will you perform a substantial portion of the services at a site that is off-campus?	Yes	No
4	Do you pay for office space outside your home or claim use of your home office as a business expense?	Yes	No
5	Is it true that you will not have access to a dedicated office, phone or email at the University?	Yes	No
6	Have you provided services similar to those being provided to the University for other customers as an independent contractor during the past 12 months? If yes, please estimate the percentage of your total business the University of Guelph represents:	Yes	No
7	Do you have a unique expertise, such as a professional designation? (e.g. accounting, medical, information technology, skilled tradesperson)	Yes	No
8	Do you advertise your services to the public? If yes, how (e.g. Yellow Pages)?	Yes	No
9	Will you provide any materials, supplies, stationery, telephone, secretarial support, business forms, tools, equipment and similar items necessary to complete this assignment?	Yes	No
10	Will your engagement with the University of Guelph allow you to hire your own staff, assign your contract, or provide a substitute worker should you be unable to complete the task?	Yes	No
11	Is it true that the University of Guelph will not provide training, supervision or instruction on how (ie methods used) to complete this engagement?	Yes	No
12	Is it true your assignment at the University will not require fixed hours of work?	Yes	No
13	Will you be paid based upon the completion of the specified task in this engagement as opposed to hourly, weekly, piece work, commission, etc?	Yes	No
14	Will you bill/invoice the University for your work?	Yes	No

15	Will you be charging Goods and Services Tax (GST)?	Yes	No
16	Do you have your own insurance coverage (e.g. health, umbrella liability, other liability)? List insurance type:	Yes	No
Describe the services to be provided:			
Total estimated amount to be paid for services including reimbursable expenses (if applicable):			
Term of service including specific dates of service (if known):			
Date(s) reports/deliverables (if any) are due:			

Part II - To be read and signed by the Individual providing the service - Signature Required

Return this signed form to the University department/unit that may engage you to perform services. Do not begin work until you have obtained appropriate purchasing authorization in accordance with University Purchasing Policy (FI 18) and a signed copy of this form from the University. Failure to follow these instructions may result in nonpayment for services.

By signature below, I warrant and affirm that the information provided herein is true, complete and correct. I agree to personally indemnify and hold the University of Guelph harmless from any claim, damages or liabilities resulting directly or indirectly from reliance thereon. I understand that I am being engaged as an independent contractor and that I am responsible for any taxes resulting from this engagement.

Name: (print) _____ Title: _____

Signature: _____ Date: _____

Part III - To be completed by the Department - 2 signatures required

I have reviewed the guidelines for Employment vs Contracted Services and the information provided on the questionnaire. Based upon my review and/or other knowledge that I may possess, I have determined that this form is complete and the Individual named in Part I qualifies as an Independent Contractor.

The University Department signatory below warrants that he/she has reviewed the information provided and the information is true to the best of the signatory's knowledge; and the independent contractor's representations regarding the services to be performed are correct.

The signatory below should be the University department representative most familiar with the independent contractor's operations.

Name: (print) _____ Title: _____

Signature: _____ Date: _____

The signatory below should be the University Department representative with the authority to requisition services.

Name: (print) _____ Title: _____

Signature: _____ Date: _____