

Issued: 4/2006

## **Policy**

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### **Purpose**

**This policy is intended to provide guidelines used to determine the classification of workers who provide services to Rowan University.** The IRS requires Rowan University to approach the issue of worker classification in a fair and impartial manner. The status of a worker as either an independent contractor or employee must be determined accurately to ensure that the worker and Rowan University anticipate and meet their tax responsibilities. As a general rule, individuals should be classified as independent contractors **on an exception basis only.**

### **Policy**

All departments that intend to engage a worker for the purposes of providing services to Rowan University must complete an Independent Contractor Pre-Hire Worksheet prior to any person starting work. (**This does not include positions that already have a position number.**) Please note: if the person you are considering is already a University employee, he/she must be treated as an employee for these services and must be paid through the payroll system.

### **How to Proceed**

1. Conduct an interview with the worker you intend to engage completing all of the questions on the **Independent Contractor pre-hire worksheet.**
2. Review the agreement you have with the worker. If you don't have a written agreement, complete a **Personal Service Contract** downloadable from <http://www.rowan.edu/open/adminfinance/accountspayable>.
3. Forward all of the documents to the controller's office for review. A determination will be made as soon as possible. If no determination can be made, we may file **Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding**, with the IRS for a determination.
4. Do not offer a position until a determination has been sent to you.

## Background and Definitions

### Background:

The Internal Revenue Code section 3121(d)(2) states that an individual is an employee if, under the common law rules, the relationship between the individual and the person for whom he or she performs services is the legal relationship of employee and employer. Generally this relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished but also as to the details and means by which the result is accomplished. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. Section 31.3121(d)-1(c), Employment Tax Regulations.

### Definitions

#### Who is an Independent Contractor?

A general rule is that you, the payer, have the *right to control or direct only the result of the work* done by an independent contractor, and *not the means and methods of accomplishing the result*. However; the Pre-Hire Independent Contractor/Employee Worksheet, included in Appendix A, was designed based on IRS defined characteristics to help determine whether the individual can be classified as an independent contractor.

#### Who is a Common-Law Employee?

Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

To determine whether an individual is an employee or independent contractor under the common law, the relationship of the worker and the business must be examined. All evidence of control and independence must be considered. In an employee-independent contractor determination, all information that provides evidence of the degree of control and degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties.