



		Policy Section:	Institutional Support
Policy Number:	5521-07	Policy Title:	Hiring Independent Contractors
Original Effective Date:	4/14/09	Department:	Human Resources
Date Last Revised:	2/25/2020		

Purpose:

This policy addresses the Internal Revenue Service (IRS) and Department of Labor’s Fair Labor Standards Act (FLSA) criteria to be considered, and internal processes to be followed, when determining whether individuals engaged to provide temporary services to the University shall be designated as employees or as Independent Contractors (IC). The Department of Human Resources, in conjunction with Administrators and hiring Deans and Directors, shall evaluate and make such determination on a case-by-case basis.

This policy does not address arrangements made with companies or organizations contracted to provide services to the University in which the contracted company assigns their employees to work at the University’s location. Corporate Officers are the sole persons authorized to establish contracts with organizations.

Definitions: An IC is a worker who qualifies for self-employment status based on factors set forth by the IRS and FLSA that differentiate the individual’s relationship with a hiring organization from that of an employment relationship. Remuneration received by ICs for work performed is income that is taxable.

NOTE: Students and employees who receive stipends for fulfilling needs at the University which are strongly connected to their academic endeavors or employment duties respectively, receive payments of such stipends through the payroll system and are not qualified to be ICs in these instances. Examples include but are not limited to: Students who receive stipends for playing in a Cairn ensemble, or contributing to the work of a student organization; Employees who accept honorariums or stipends for speaking at Cairn events, classes, or chapels.

Procedure:

1.0 Determination of IC Status

- 1.1 It is the hiring supervisor’s responsibility to consult with the Vice President of Human Resources to evaluate the suitability of the assignment/position, as well as the prospective individual, to determine whether an IC relationship is appropriate.
- 1.2 Individuals filling temporary assignments/positions which meet the criteria of the majority of the determining factors shall be classified as ICs. Regular, full- and part-time needs may be filled by an IC, with approval of the overseeing Administrator.
- 1.3 The University aims to provide consistency in its classification of employees / independent contractors by function. Examples of assignments appropriate for, and classified as, IC relationships are found on pages 5-6.
- 1.4 Exceptions to an established classification may be made on a case-by-case basis since the IRS’s guidelines are based on the facts and circumstances of the particular situation. In order for an exception to be made, the following shall be considered:

- 1.4.1 If the factors describing the relationship predominately fall into the category of IC, the hiring supervisor may proceed with recommending an independent contractor arrangement for the assignment.
- 1.4.2 An individual shall not be recommended as an IC simply because s/he has functioned as such for other organizations, or because s/he has functioned as such for Cairn under other assignments, or because s/he requests IC status. Each function shall be evaluated on its own merits.
- 1.4.3 An individual may serve in an employee function and an IC function simultaneously. Both functions/roles are evaluated separate from one another in order to make a proper designation for each. (Example: a regular staff employee who performs administrative work may serve in an affiliate artist IC function when s/he plays in the orchestra.)

2.0 Contractual Agreement

- 2.1 Once a determination of eligibility for IC status is made by way of discussion between the hiring supervisor and the Sr. Vice President of Human Resources, either in a general manner by identifying the status of a regular function (such as Affiliate Artist), or in a specific manner such as for a new function or proposed arrangement, a contractual agreement shall be developed outlining the dates, expectations, and compensation arrangements for the assignment.
 - 2.1.1 The designation of IC status will be predominant in the agreement, and the individual, by signing the agreement, will indicate s/he concurs with this designation.
 - 2.1.2 If the individual has not previously served the University in an IC capacity, the hiring supervisor shall work with the Sr. Vice President of Human Resources to develop the initial contractual agreement *except when* the individual is contracted to serve in an identical capacity to one already reviewed and classified as an IC function (example: Opera Workshop ICs).
 - 2.1.3 If the individual has served Cairn as an IC in the same capacity in the past, and a prior contractual agreement is on file, the hiring supervisor shall update it with information relating to the new assignment. The hiring supervisor and the department of Human Resources shall retain records of prior contractual agreements. Independent contractor agreements are retained for a period of seven years from the time the contract ended.
 - 2.1.4 On the occasion of the provision of an initial contractual agreement to a new IC, the hiring supervisor shall provide the contractual agreement to the Sr. Vice President for Human Resources to be approved and issued.
 - 2.1.4.1 If the individual has not previously served the University as an IC, the hiring supervisor shall include a W-9 Form (Request for Taxpayer Identification Number and Certification) with the contractual agreement, requesting the individual to complete the form and return it along with the signed contractual agreement.
 - 2.1.4.2 If the individual has previously served the University as an IC and a Taxpayer Identification Number (TIN) is on file in Human Resources, a W-9 does not need to be provided with subsequent contracts. A W-9 log on the K drive lists the names of individuals for whom W-9s are on file. Human Resources is responsible for maintaining information on the W-9 log.
 - 2.1.4.3 A W-9 Form may be found in pdf format on the K drive under Forms.

- 2.2 The signed contractual agreement and completed W-9 shall be returned to the hiring manager who shall provide a copy of signed contractual agreement and W-9, in hard copy or electronically, to the department of Human Resources to be retained in the IC's file in the Human Resources department.
- 2.3 Human Resources notifies Business Services of IC agreements and provides an electronic copy of W-9s.
- 2.4 The hiring supervisor shall retain a copy of the contractual agreement.

3.0 Processing Requests for Payment

The Hiring Supervisor shall submit requests for payment as follows:

- 3.1 If the IC is working for a School or academic department in a semester-based assignment, the dean shall provide notification to the Office of the Provost along with the list of adjunct faculty. The dean shall clearly specify IC status.
- 3.2 Requests for payment to ICs on non-semester-based assignments shall be issued by the hiring supervisor by processing an Accounts Payable Payment Request (or list of ICs to be paid, if there are more than one to be paid at a given time). Information shall be included on, or attached to, the Accounts Payable Payment Request (or list) that clearly indicates IC status, and dates and brief description of services.
- 3.3 Payments to ICs are issued through Accounts Payable, not payroll.
- 3.4 By January 31 each year, a 1099 form is mailed to ICs reporting the total of payments made to them by the University in the prior calendar year.

4.0 Documents NOT needed

- 4.1 ICs do not complete Employment Applications, W-4, I-9, or Residency Certification forms.
- 4.2 Hiring supervisors may request ICs to review and sign the Statement of Faith and Community Life Covenant documents. This decision depends on the assignment and the degree and extent of interaction and influence the IC will have with students.
- 4.3 ICs shall be responsible for obtaining background checks according to state and federal clearance laws as these laws pertain to the work that the ICs do. The University has the right to view or obtain copies of these clearances, particularly if the IC will be working with minors.

5.0 Factors Used to Determine Status

IRS and FLSA guidelines are used to inform decisions in determining Independent Contractor vs. Employee status. The guidelines focus on two general categories, Behavioral Control and Financial Control as shown below.

The Sr. Vice President of Human Resources is responsible for applying the guidelines to each decision made to determine a position's status.

FACTORS TO DETERMINE INDEPENDENT vs. EMPLOYEE STATUS

Below each category of “control” guidelines, the IRS questions pertaining to this category are listed. Determination of IC vs. Employee status is based on many factors. Most functions fit somewhere on the continuum between IC and Employee and are not clearly one or the other in every category.

Behavioral Control	
Independent Contractor (IC)	Employee (E)
<ul style="list-style-type: none"> • The University defines the expected outcome, and expects the Independent Contractor to use his/her own expertise and process to achieve results. Few instructions are provided. • Schedule and work location are largely controlled by the Independent Contractor. • The Independent Contractor generally provides his/her own equipment, tools, and supplies. • Assistance or additional resources are generally provided by the Independent Contractor. • Obtaining and paying for training, certification, etc. is generally the Independent Contractor’s responsibility. 	<ul style="list-style-type: none"> • The University defines and directs the employee’s work by way of instructions, supervision, accountability and performance evaluation measures. • Schedule and work location are largely controlled by the University. • The University generally provides equipment, tools, and supplies. • Assistance or additional resources are generally provided by the University. • Obtaining and paying for training, certification, etc. is generally the University’s responsibility.
<p><i>Relationship of the Parties</i></p> <ul style="list-style-type: none"> • An Independent Contractor is not eligible for most employee benefits. • Independent Contractors are responsible for their own unemployment compensation, workers’ compensation and liability insurance. • The work relationship is best defined by way of a contractual agreement which stipulates the duration of the relationship (which may be renewed) and services. • An Independent Contractor provides similar services to multiple organizations, customers, or clients. 	<p><i>Relationship of the Parties</i></p> <ul style="list-style-type: none"> • An Employee is eligible for employee benefits. • Organizations provide employees’ unemployment compensation, workers’ compensation and liability insurance coverage. • While some employees may have a contractual agreement with an employer, the relationship of many employees and employers is “at-will.” • While an employee may have more than one employer, his/her work is generally limited to a single, primary employer.

Financial Control	
Independent Contractor	Employee
<ul style="list-style-type: none"> • Independent Contractors generally have significant investments in their work. These can include materials, work space/location, phone and fax services, equipment, instructional or reference materials, licensing, incorporation, etc. • Business expenses are generally not reimbursed by the University. • Independent Contractor can realize a profit or incur a loss. 	<ul style="list-style-type: none"> • Employees generally have limited investments in their work, and rely on the investments made by their employer. See examples, left. • Expenses are usually reimbursed by the University. • The University, not Employees, realize a profit or incur a loss.
<p><i>Tax Status</i></p> <ul style="list-style-type: none"> • Independent Contractor’s tax status may be referenced by either a social security number or an employer identification number. • Independent Contractors are responsible to pay their own income tax and self-employment tax. These taxes are not withheld by the University. 	<p><i>Tax Status</i></p> <ul style="list-style-type: none"> • An Employee’s tax status is referenced by the individual’s social security number. • An Employee’s income tax must be withheld by the employer. Social security, Medicare and unemployment (FUTA) taxes must also be paid by the employer. • Unreimbursed business expenses are deducted on Schedule A of the income tax return, when properly itemized and when

• Unreimbursed business expenses are deducted on Schedule C of the income tax return.	not in excess of the IRS percent-of-adjusted-gross-income limit.
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	Independent Contractor	Employee
Benefits to the Status	<ul style="list-style-type: none"> • Tax-related advantages • Flexibility in work schedule • Freedom to employ one’s own expertise • Ability to control one’s income and benefits from profitability • Employer benefits from freedom from liability for benefits, training, and insurance. 	<ul style="list-style-type: none"> • Tax-related advantages • Stability of an employment relationship • Freedom from liability for one’s own insurance and (exclusive) tax responsibilities • Employer provided compensation, benefits, training • Employer benefits from continuity of relationship and control of assignments and performance.
Drawbacks to the Status	<ul style="list-style-type: none"> • Must bear one’s own tax and insurance liability • Must provide one’s own benefits • Must obtain one’s own work assignments • Must obtain and sustain one’s own supplies, training, assistance, etc. • University has limited control over the individual’s behavior and performance. • Individuals incorrectly classified as Independent Contractors may have legal claims to employment benefits. 	<ul style="list-style-type: none"> • Must perform according to employer’s standards, procedures, expectations, changes • Inability to enjoy flexible work schedules and multiple assignments • Financial stability is dependent on employer • Employer must assume responsibility for individual’s compensation, benefits, safety, training, and insurance.

SUGGESTIONS, EXAMPLES AND CATEGORIZATIONS

Assignments Appropriate for Independent Contractors

Functions at Cairn that are best-suited to assignment of Independent Contractors are those which:

- Require fulfillment by highly-specialized individuals;
- Involve services provided on a periodic, part-time and/or temporary basis;
- Allow the Independent Contractor to simultaneously provide similar services to other organizations;
- Require only general oversight by the University.

Functions which are categorized as Independent Contractor relationships:

- One-on-one specialized student instruction or assistance such as
 - private or semi-private music instruction;
 - sign-language interpretation for a hearing impaired student;
 - individualized tutoring or counseling;
- Guest speakers.
- Guest performers such as individuals hired to:
 - supplement the orchestra for musical productions;
 - give concerts (excludes School of Music faculty who are not considered guests);
 - accompany students in recitals.
- Individuals engaged to conduct research or provide specialized consulting services.
- Individuals hired to provide special services to replace or supplement those provided by University staff or faculty such as;
 - Special-project painting, construction, carpet installation and the like;
 - Special-event decorating (such as making floral arrangements), catering, or the like;
 - Officiate at athletics competitions;
 - Photography, videography, writing, or graphic/web design services

Assignments Not Appropriate for Independent Contractors

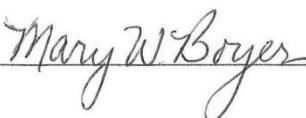
Functions at Cairn that are generally not appropriate for Independent Contractor relationships are those for which:

- The University determines course content and syllabi;

- University assignments preclude or limit the individual's availability to perform similar work for other organizations;
- Resources, processes, approach, and accountability measures must be established and controlled by the University;
- Similar work is performed by employees *and* all such work can be performed by employees;
- The individual is *required* to utilize training, tools, equipment, and assistance provided solely by the University;
- The individual receives training and support from the University which may be used exclusively for the benefit of the University.

Functions which are categorized as employment relationships:

- Instructional positions (full-time, part-time, and adjunct faculty) in which the curriculum, classroom, and schedule is established at the sole discretion of the University;
- Positions requiring supervision of Cairn employees;
- Positions considered regular (ongoing);
- Assignments which are directly related to an employee's primary function (even though the employee may be paid extra for the service), such as:
 - Full-time School of Music faculty giving recitals or performances;
 - Technology Services exempt staff employees providing A/V services for a special event;
 - Regular faculty, staff, or administrators guest-lecturing for a class or University event.
- Students performing services such as class or student senate officers, club staff or officers, intramural representatives, and/or athletics event assistance.



2/25/2020

President's Cabinet Representative

Date