



Policy: Independent Contractor Policy

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Financial Affairs Department
Payroll and Procurement Policies and Procedures

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Determining Employer and Employee Relationship

The IRS has been very aggressive in looking at how universities classify their workers. The penalties for incorrectly classifying employees as independent contractors are significant. If a worker paid as independent contractor is reclassified by the IRS as an employee, the University will be liable for the amount of the federal income taxes it failed to withhold, together with both the employer's and employee's share of FICA taxes associated with that employee's compensation.

In addition, Villanova University is responsible for the withholding and timely remittance of appropriate income taxes from wages paid to our employees. These wages and taxes paid to employees are reported on Form W-2; amounts paid to independent contractors are reported on Form 1099.

Villanova University utilizes the Common Law Test in determining worker classification. This method basically consists of analyzing the level of control we, as the employer, exert over the worker. The more control we possess (especially over the means of accomplishing a task rather than the end result), the more likely a worker is an employee. Control, in this instance, is defined as the level of legal right to direct rather than the level of direction actually provided.

It should be noted that the IRS tends to view an individual performing teaching functions for a University as an employee of that University for tax purposes regardless of the duration.

A current employee of the University will not be considered an independent contractor.

Policy

Prior to engaging the services of any individual as an independent contractor, the hiring department must complete an Independent Contractor Classification Checklist to determine the proper work status of the individual - either as an employee of the University or an independent contractor.

Definitions

Employee - an individual in an employment situation in which the employer has the right to control and direct the individual with regard to the result to be accomplished and the process by which the result is accomplished. **Since the main focus of Villanova University is higher education, any individual performing a teaching function must be treated as an employee.**

Independent contractors - individuals who render a service and meet contractor conditions established by the IRS. They typically have a separate workplace, are not supervised, and have a particular set of skills not available elsewhere within the organization. They are not entitled to employee benefits, are not covered by workers' compensation, and their pay is usually not subject to income tax withholding.

Consultants - independent contractors who more specifically provide professional advice. They usually have a separate skill or expertise not available within the University, and the need for their services commonly does not extend beyond a limited period of time in which to complete a specifically defined project. **Individuals who are currently employed by the University who may be asked to serve as consultants for other University departments must be paid through Payroll with all appropriate taxes withheld.**

Classification Factors

A worker is an employee, not an independent contractor, if an employer/employee relationship exists. Such a relationship exists if the University has the right to DIRECT AND CONTROL the worker, both as to the final results and the details of when, where, and how the work is to be done.

Procedure

Prior to engaging the services of any individual as an independent contractor, the hiring department must complete an Independent Contractor Classification Checklist to determine the proper work status of the individual. Departments are responsible for making an initial assessment of the employment status of individuals they hire based on the results of the checklist; departments are encouraged to contact the Payroll Office with specific questions prior to finalizing arrangements with the individual. Upon completion of the classification checklist, if a majority of your answers are in shaded section, your request should be treated as an employee.

If the individual is considered to be an employee, the hiring supervisor will follow the regular hiring procedures to place the individual on the University's payroll. Human Resources or Academic Affairs will facilitate that action.

If the individual is considered to be an independent contractor, the hiring department will submit a requisition to the Procurement Department along with a completed Villanova Consulting Agreement*, classification checklist and any other supporting documentation. All new vendors must complete a vendor profile and W-9 form which must be submitted with request. Contracts in excess of \$5,000. must be competitively bid or a sole source justification form must be completed. This independent contractor will receive a purchase order from Villanova University and all invoices will be processed against this order number.

*Other independent contractor agreements will be accepted once approved by our General Counsel's Office.

Guidelines to Consider When an Independent Contractor Relationship Exists.

The hiring of an independent contractor or consultant should be based upon a selection process which attempts to secure the most qualified individual for the assignment. Compensation should be appropriate for the type of advice or service provided and should reflect the skills and qualifications of the individual selected to perform the service.

1. Do not establish a work schedule.
2. Do not provide office space or training.
3. Do not furnish tools and materials.
4. Do not require the independent contractor to provide regular verbal or written reports.
5. Payment for the assignment should be based generally on one fee for performing the service rather than by the hours spent on that assignment.
6. The independent contractor may need to provide proof of liability coverage.
7. Incidentals such as travel, meals and materials should be included in the fee, or should be stated, for example, "as not to exceed ten percent of the fee." Any other arrangements for reimbursement of travel or other expenses must be reviewed in advance with the Procurement Department and should be specified in the agreement as well; otherwise the University will not be liable for travel expenses.
8. Do not include an independent contractor's name in the Villanova telephone directory or request the issuance of a regular parking permit.
9. Be mindful that independent contractors who earn more than \$10,000 a year from a single employer and who do not perform services for any other employer are likely to be considered employees by the Internal Revenue Service.

More information regarding the classification of independent contractor vs employee can be found at the following IRS websites:

[IRS Guidelines](#)

[Tax Guide](#)

Questions regarding the University's policy should be directed to the Office of Payroll.

Links to other referenced materials:

[Villanova's Consulting Agreement](#) (sample version only– contact the Procurement Department or General Counsel Office for executable version)

[Vendor profile](#)

[W-9 Form](#)

CLASSIFICATION CHECKLIST
(Employee verse Independent Contractor)

Name of individual being considered: _____

Individual's SSN or EIN: _____

	YES	NO
Current Payroll Status:		
Was the person being paid through Payroll during the current or previous calendar year?		
If Yes, was it for similar work?		
Behavior Control:		
Does the employer have the right to control when, where, and how the work is done?		
Do you set the work hours?		
Is the person required to perform the work personally?		
Is the work performed on Villanova University premises or using our facilities?		
Is the worker required to follow your instructions in completing the job or task?		
Is the worker allowed to delegate or assign the work to others and/or assistants not currently working for Villanova?		
Financial Control:		
Is the worker paid by the hour, biweekly, or monthly, rather than for the completion (or stage completion) of the project?		
Are you required to pay the worker for time spent even if the job is not completed?		
Do both parties have the right to terminate the relationship at will?		
Is the worker doing business as a corporation or using a legitimate business name?		
Does the employee have a federal employer identification number (not Soc. Sec. #)? If so, please list above.		
Does the worker carry his/her own insurance?		
Relationship:		
Is Villanova University the individual's only client?		
Is the work in question customarily performed by employees?		

Answers in shaded section weigh in favor of treating person as an employee. Contact Payroll for assistance in determining employment status.

Please describe the work that is to be done and who will be doing it (be as detailed as possible):

Completed By: _____

Your Title: _____

Department and Phone _____