CLASSIFICATION: EMPLOYEE OR INDEPENDENT CONTRACTOR?

You have identified the need for a worker: do you create a new position for an employee or do you engage an independent contractor? The decision may not be as straight-forward as you think – and it can be costly if you get it wrong. Clemson's Office of Human Resources can assist you in making this determination, but as an additional resource consider the following guidance from IRS Publication 937:

To help you determine whether an individual is an employee under the common-law rules, the IRS has identified **20 factors** that are used as guidelines to determine whether sufficient control is present to establish an employer-employee relationship.

These factors should be considered guidelines. Not every factor is applicable in every situation, and the degree of importance of each factor varies depending on the type of work and individual circumstances. However, all relevant factors are considered in making a determination, and no one factor is decisive.

It does not matter that a written agreement may take a position with regard to any factors or state that certain factors do not apply, if the facts indicate otherwise. If an employer treats an employee as an independent contractor and the relief provisions discussed earlier do not apply, the person responsible for the collection and payment of withholding taxes may be held personally liable for an amount equal to the taxes that should have been withheld.

The 20 factors indicating whether an individual is an employee or an independent contractor are:

1) *Instructions*. An **employee** must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.
2) *Training*. An **employee** may be trained to perform services in a particular manner. **Independent contractors** ordinarily use their own methods and receive no training from the purchasers of their services.
3) *Integration*. An **employee's** services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
4) *Services rendered personally*. An **employee** renders services personally. This shows that the employer is interested in the methods as well as the results.
5) *Hiring assistants*. An **employee** works for an employer who hires, supervises, and pays workers. An **independent contractor** can hire,

supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

6) *Continuing relationship*. An **employee** generally has a continuing relationship with an employer. A continuing relationship may exist even if work is performed at recurring although irregular intervals.
7) *Set hours of work*. An **employee** usually has set hours of work established by an employer. An **independent contractor** generally can set his or her own work hours.
8) *Full-time required*. An **employee** may be required to work or be available full-timer. This indicates control by the employer. An employee may be required to work or be available full-time. This indicates control by the employer. An **independent contractor** can work when and for whom he or she chooses.
9) *Work done on premises*. An **employee** usually works on the premises of an employer, or works on a route or at a location designated by an employer.
10) *Order or sequence set*. An **employee** may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.
11) *Reports*. An **employee** may be required to submit reports to an employer. This shows that the employer maintains a degree of control.
12) *Payments*. An **employee** is generally paid by the hour, week, or month. An **independent contractor** is usually paid by the job or on a straight commission.
13) *Expenses*. An **employee's** business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control.
14) *Tools and materials*. An **employee** is normally furnished significant tools, materials and other equipment by an employer.
15) *Investment*. An **independent contractor** has a significant investment in the facilities he or she uses in performing services for someone else.
16) *Profit or loss*. An **independent contractor** can make a profit or suffer a loss.
17) *Works for more than one person or firm*. An **independent contractor** is generally free to provide his or her services to tow or more unrelated persons or firms at the same time.
18) *Offers services to general public*. An **independent contractor** makes his or her services available to the general public.
19) *Right to fire*. An **employee** can be fired by an employer. An **independent contractor** cannot be fired so long as he or she produces a result that meets the specifications of the contract.
20) *Right to quit*. An **employee** can quit his or her job at any time without incurring liability. An **independent contractor** usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

Please contact the Office of Human Resources with any questions: **https://www.clemson.edu/human-resources/contact-hr/**