

# **Guidelines for Determining Independent Contractor (IC) Status**

## **I. Overview**

Occasionally, Seattle University retains an Independent Contractor to provide services that are outside of the scope of the university's core business functions of teaching. An IC should be free from control or direction in the performance works, customarily engages in an independent trade, may work for multiple firms at the same time, and the service is performed outside of the usual course of business for which the service is performed. The hiring of an IC normally provides flexibility and rapid results, provides solutions to short-term needs that are outside the scope of the university's core business functions.

## **II. IC Determination Tests**

IC determination is based on ABC classification test for WA state and modified Internal Revenue Service (IRS) "Right-to-Control" test under Rev. Rul. 87-41. These laws and regulations provide the framework through which the university can legally hire individuals as ICs. The current IRS test evaluates the level of control using three categories: behavioral, financial, and type of relationship. Behavioral control analyzes factors that show who controls how work is performed. Financial control evaluates if the university has the right to control the economic aspects of the IC's job. The type of relationship reviews how the IC and the university perceive their relationship to each other.

Note: an Individual does not have to meet all criteria to qualify as an IC, and no single factor is decisive in determining an IC status.

## **III. Why Proper Classification Is Important**

Proper classification of an IC ensures that the university is in compliance with various federal laws, state and local laws and regulations. There are significant tax penalties for incorrect classification of an individual as an IC.

## **IV. Consequences for Misclassifications**

Employee misclassification may result in:

- Retroactive federal payroll taxes
- Retroactive unemployment taxes
- Retroactive employment benefits
- Penalties and fines

## **V. Collaborative Efforts**

Payroll reviews and provides the final approval for IC payments. Payroll consults with various departments like HR, Faculty Service Office, and the Legal Counsel as necessary. If it is determined that the Individual is not qualified as an IC, payroll will notify you and advice the appropriate next steps.

## ABC and IRS Tests for Independent Contractor Determinations

### Step 1. Complete the ABC test for IC determination in WA state.

1. Has the IC been and will continue to be **“free from supervision, direction or control”** over the performance of such service, both under his or her contract of service and in fact? RCW 51.08.181 and 195, Section 1.

Yes\_\_\_ No\_\_\_

Explanation: the IC must be free to perform his or her duties with minimal instruction from the university. The IC completes the job using his or her own approach with little direction and dictates the hours that he or she will work on the job.

2. Is the service provided by IC **“outside the usual course of business,”** or in other words, does the IC do something different from what Seattle University does? RCW 51.08.181 and 195, Section 2.

Yes\_\_\_ No\_\_\_

Explanation: IC must provide service outside the university’s core business functions, which is teaching. If it is teaching, the Individual cannot be classified as an IC. Please contact Faculty Service Office for appropriate classification.

Are co-workers performing **substantially similar services and under substantially similar direction and control, treated as employees?**

Yes\_\_\_ No\_\_\_

If the answer is ‘YES’ the Individual may not be classified as an IC. Please contact HR Office for appropriate classification.

3. Is the IC customarily engaged in an **“independently established trade, occupation, profession, or business,”** of the same nature as that involved in the contract of service? RCW 51.08.181 and 195, Section 3.

Yes\_\_\_ No\_\_\_

Explanation: IC often works for more than one firm at the same time and is not subject to a non-competition rule. IC may advertise, have business website, hold a business license.

The answer to the above three questions must be **‘YES’** in order to proceed to Step 2.

**Step 2. The modified IRS test. Please carefully review the section “Independent Contractor Under Common Law Factors” below to gain some knowledge of IC characteristics prior to completing the modified IRS test.**

**A. Behavioral Control (refers to facts that show whether there is a right to direct or control how the Individual does the work)**

1. Will the Individual be instructed by Seattle University in the following ways:
  - a. When and where to perform the work (If Seattle University directs when and where work is done, this control indicates a possible employment relationship)
  - b. What tools or equipment to use (ICs would normally use their own supplies and tools)
  - c. What helpers to hire or to assist with the work (ICs retain control over hiring, supervising, and paying helpers, this arrangement suggests an IC relationship)
  - d. Where to purchase supplies and services (ICs are typically free to purchase their own supplies without direction from Seattle University)
  - e. What work must be performed by a specified individual (ICs are typically free to assign work to anyone)
  - f. What order or sequence to follow when performing the work (If Seattle University requires work to be performed in specific order or sequence, this control suggests an employment relationship)

Yes\_\_\_ No\_\_\_

2. Will Seattle University provide detailed instruction on how to perform? (Less detailed instructions reflect less control, indicating that the Individual is more likely an IC)

Yes\_\_\_ No\_\_\_

3. Will Seattle University use evaluation system to measure the Individuals’ performance? (If the evaluation system measures just the end result, then this can point to either an IC or an employee. Having no specific evaluation system points to an IC relationship)

Yes\_\_\_ No\_\_\_

4. Will Seattle University train the Individual? (Requesting the Individual to undergo training suggests an employment relationship since Seattle University is directing the methods by which work is accomplished. The IRS believes this is strong evidence that

the Individual is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship)

Yes \_\_\_ No \_\_\_

**B. Financial Control (refers to facts that show whether or not Seattle University has the right to control the economic aspects of the Individual's job)**

1. The Individual has investment in own work facilities, office or vehicle used exclusively for the contracted services or any other investment in equipment needed to perform the services. (ICs typically invest in and maintain their own work equipment. In contrast, most employees rely on their employer to provide work facilities. However, a significant investment is not necessary for IC status as some types of work simply do not require large expenditures)

Yes \_\_\_ No \_\_\_

2. Seattle University reimburses and pays the expenses for the Individual. (ICs typically bear the cost of travel or business expenses, and most ICs set their fees high enough to cover these costs. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. Direct reimbursement of business costs by Seattle University suggests an employment relationship)

Yes \_\_\_ No \_\_\_

3. The Individual does have opportunity to realize profit or loss. (If the Individual has a significant investment in the tools and equipment used and if the Individual has unreimbursed expenses, the Individual has a greater opportunity to lose money (i.e., their expenses will exceed their income from the work). Having the possibility of incurring a loss indicates that the Individual is an IC)

Yes \_\_\_ No \_\_\_

4. The Individual provides services to other firms and/or regularly makes services available to the public. (ICs often advertise, maintain a visible business location, and are available to work in the relevant market)

Yes \_\_\_ No \_\_\_

5. The individual is paid a pre-determined sum on weekly or monthly pay schedule rather than by the project. (Hourly, weekly, or monthly pay schedules of regular or predetermined sums are characteristic of employment relationships, unless the payments simply are a convenient way of distributing a lump-sum fee. Professionals like

lawyers and computer programmer consultants are often paid hourly and they may be classified as IC. Payment of commissions (not supplemented by a salary) or a flat fee upon project completion is more characteristic of IC relationships)

Yes\_\_\_ No\_\_\_\_\_

**C. Type of Relationship (refers to facts that show how the Individual and Seattle University perceive their relationship to each other)**

1. Seattle University has a written contract with the Individual. (Although a contract may state that the Individual is an IC, this is not sufficient to determine the Individual's status. The agreement terms and how the parties work together must be consistent with these factors. The IRS is not required to follow a contract stating that the Individual is an IC)

Yes\_\_\_ No\_\_\_\_\_

2. Seattle University provides Individual with employee benefits. (Businesses generally do not grant these benefits to ICs. However, the lack of these types of benefits does not necessarily mean the Individual is an IC)

Yes\_\_\_ No\_\_\_\_\_

3. Seattle University has a continuous relationship with the Individual. (If you hire an Individual with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship. However, an IC arrangement can involve an ongoing relationship for multiple, sequential projects)

Yes\_\_\_ No\_\_\_\_\_

4. Is the service provided by IC core activity of Seattle University's functions? (Individuals whose services are a key aspect business operations or significantly affect business success are likely to be considered employees because it is more likely that the business will have the right to direct and control the Individual's activities)

Yes\_\_\_ No\_\_\_\_\_

An Individual does not have to meet all criteria to qualify as an employee or IC, and no single factor is decisive in determining an Individual's status. The individual circumstances of each case determine the weight assigned to different factors.

## Independent Contractor Under Common Law Factors

The following examples provide some guidelines of IC characteristics:

**1. INSTRUCTIONS:**

An IC does the job his or her own way with few, if any, instructions as to the details or methods of the work. See Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

**2. TRAINING:**

An IC uses his or her own methods and thus need not receive training from the purchaser of those services. See Rev. Rul. 70-630, 1970-2 C.B. 229.

**3. INTEGRATION:**

An IC's services are usually separate from the university's core business and are not integrated or merged into it. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.

**4. SERVICES RENDERED PERSONALLY:**

A true IC may assign another to do the job in his or her place and need not perform services personally. See Rev. Rul. 55-695, 1955-2 C.B. 410.

**5. HIRING, SUPERVISING & PAYING HELPER:**

ICs select, hire, pay and supervise helpers used and are responsible for the results of the helpers' labor. Compare Rev. Rul. 63-115, 1963-1 C.B. 178, with Rev. Rul. 55-593, 1955-2 C.B. 610.

**6. CONTINUING RELATIONSHIP:**

An IC is usually hired to do one job of limited duration and has no expectation of continuing work. See *United States v. Silk*.

**7. SET HOURS OF WORK:**

A true IC manages his or her own time and works the days and hours he or she chooses. See Rev. Rul. 73-591, 1973-2 C.B. 337.

**8. FULL TIME REQUIRED:**

A true IC cannot be required to devote full-time service to one firm exclusively. See Rev. Rul. 56-694, 1956-2 C.B. 694.

**9. LOCATION WHERE SERVICES PERFORMED:**

IC ordinarily work where they choose. The workplace may be away from the university's premises. Rev. Rul. 56-660, 1956-2 C.B. 693, Rev. Rul. 56-694.

**10. ORDER OR SEQUENCE SET:**

A true IC is concerned only with the finished product and sets his or her own order or sequence of work. See Rev. Rul. 56-694.

**11. ORAL OR WRITTEN REPORTS:**

An IC is usually not required to submit regular oral or written reports about the work in progress. See Rev. Rul. 70-309, 1970-1 C.B. 199, and Rev. Rul. 68-248, 1968-1 C.B. 431.

**12. PAYMENT BY THE HOUR, WEEK OR MONTH:**

An IC is normally paid by the job, either a negotiated flat rate or upon submission of a bid. See Rev.

Rul. 74-389, 1974-2 C.B. 330.

**13. PAYMENT OF BUSINESS & TRAVEL EXPENSE:**

IC normally pays their own business and travel expenses without reimbursement. See Rev. Rul. 55-144, 1955-1 C.B. 483.

**14. FURNISHING TOOLS & EQUIPMENT:**

An IC ordinarily provides the tools and equipment necessary to complete the job. See Rev. Rul. 71-524, 1971-2 C.B. 346.

**15. SIGNIFICANT INVESTMENT:**

True ICs usually have a substantial financial investment in their independent business. See Rev. Rul. 71-524.

**16. REALIZE PROFIT OR LOSS:**

An IC can either realize a profit or suffer a loss depending on the management of expenses and revenues. See Rev. Rul. 70-309.

**17. WORKING FOR MORE THAN ONE FIRM AT A TIME:**

An IC often works for more than one firm at the same time and is not subject to a non-competition rule. See Rev. Rul. 70-572, 1970-2 C.B. 221.

**18. MAKING SERVICE AVAILABLE TO THE PUBLIC:**

An IC may advertise, carry business cards, hang out a shingle, or hold a separate business license. See Rev. Rul. 56-660.

**19. RIGHT TO DISCHARGE WITHOUT LIABILITY:**

If the work meets the contract terms, an IC cannot be fired without liability for breach of contract. Rev. Rul. 75-41, 1975-1 C.B. 323.

**20. RIGHT TO QUIT WITHOUT LIABILITY:**

An IC is legally responsible for job completion and, on quitting, becomes liable for breach of contract. See Rev. Rul. 70-309, Rev. Rul. 75-41