Determination of Employee vs. Independent Contractor Status
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Determination of Employee vs. Independent Contractor Status

Please refer to this process if you are:

- Seeking to engage an independent contractor (rather than seeking to engage an employee), or
- Seeking to engage a worker who is requesting treatment as an independent contractor (rather than being treated as an employee).

This process applies when you are seeking to engage corporations when:

- We are engaging the services of a specific worker, and
- The specific worker is a shareholder or owner of the corporation being engaged.

Introduction

At times, services are provided to the University under arrangements other than regular employee appointments. When the relationship between the worker and the University is not clearly one of employment, this guide documents the process the University uses to determine whether a worker is an employee or an independent contractor for income tax purposes. This guide should be consulted regardless of whether the proposed contract will be with an individual, partnership or corporation.

It is important to properly determine whether a worker should be engaged as an employee or an independent contractor for income tax purposes based on the individual circumstances of each arrangement in accordance with the Canada Revenue Agency’s (CRA’s) employment classification guideline (RC4110 Employee or Self-employed?). Failure of the University to do so can result in costs to the University due to non-compliance with the Income Tax Act, Canada Pension Plan, Employment Insurance Act, and other related legislation as detailed in Appendix A.

IMPORTANT: It is imperative to begin this process with enough lead time to ensure all of the steps are completed before work is to begin.
Determining Employee/Independent Contractor Status

The first step in determining the status of a worker is to consult the Service Types list below. If this list indicates that the work is employment in nature, the individual worker must be engaged as an employee and the University’s regular hiring practices followed.

If the pre-determined conclusion does not appear in one of the sections below and the worker is seeking to be engaged as an independent contractor, or a corporation is seeking to be engaged to perform the services, an Independent Contractor (ICON) Questionnaire must be completed and sent to icon@uwaterloo.ca for assessment. Two weeks lead time must be provided for the ICON team to make an assessment. Further notice may be necessary to complete the hiring processes (if the worker is an employee) or for procurement practices to be followed (if the individual worker is a contractor or a corporation or partnership is going to be engaged).

Service Types

Employment-type arrangements

The University has determined that the following types of workers are to be classified as employees:

- **Full-time Academic Appointments**
  - All full-time academic appointments are considered to be employees.
  - Exception: The secondment of an employee from another educational institution or government entity where the University pays the seconding institution for the worker’s time.

- **Part-time Instruction for Credit Courses that are part of an accredited degree program**
  - Part-time instructors for Credit Courses that are part of an accredited degree program are considered to be employees of the University.
  - Exception: The secondment of an employee from another educational institution, government entity or large professional firm where the worker is not an owner or shareholder of the firm and where the University pays the institution for the worker’s time.

- **Non-credit short courses**
  - If the course is (or is intended to be) recurring and the worker teaches >25 hours per year total for the University, the worker is considered to be an employee.
  - Exception: The secondment of an employee from another educational institution, government entity or large professional firm where the worker is not an owner or shareholder of the firm and where the University pays the institution for the worker’s time.

- **Existing or former employees**
  - Individuals doing the same or similar work as is/was done during their employment are considered to be employees.
Exception: Research Consulting (discussed below).

- **Casual Employment***
  - Workers hired in a variety of support roles across campus where expenses are paid by the University are considered to be employees.
  - Examples include:
    - Marking exams and/or papers
    - Preparing exams and/or course outlines
    - Proctoring
  
  *Where an existing employee of the University performs these or similar tasks, payment for any additional hours worked beyond the employee’s standard hours should follow the appropriate overtime policy.

Generally speaking, where only the individual’s time is purchased (e.g. individual is paid a salary or a fixed hourly or daily rate), specific tasks are assigned and expenses are borne by the University, an employment-type arrangement usually exists.

If an arrangement is determined to be employment-type in nature, the University must engage the individual worker as an employee.

**Consulting**

Consulting is the provision of professional or expert advice. It does not include teaching or research-related activities. Please refer to the Post Determination Actions section of this document for requirements related to Bill 122 for engaging independent contractors in consulting contracts.

- Consulting services performed by existing employees of the University will generally be considered an extension of their employment relationship and any related payments treated as employment earnings. However, if the services are unrelated to the duties carried out by the individual under their employment contract, the ICON Questionnaire should be completed to assist in the determination of worker status.
- For consulting services performed by other individuals, partnerships, or corporations, the ICON Questionnaire should be completed to assist in the determination of worker status.

**Research Consulting**

Research consulting payments can be made if the University enters into a research contract with a third party and a portion of the contract fee paid to the University is allocated by the third party for payments to faculty researchers (typically the Principal Investigator (PI) or co-applicant on the project) for their work on the research. These payments can be paid by the University to a corporation controlled by a faculty member (in which case Policy 52, Private Corporations, should be followed) or to the faculty member directly.

There is no need to complete the ICON Questionnaire for these research consulting payments. The University reports these payments on T4A slips.

Details on how to submit requests for Research Consulting payments can be found on the Office of Research website.
**Other arrangements**

Other categories of workers are less clear and should therefore be **assessed through the use of the ICON Questionnaire**. Common types of workers requiring assessment would include but are not limited to:

- Instructors for non-credit short courses not classified above
- Guest lecturers/speakers
- Performing artists
- Workers performing non-instructional services such as:
  - Technical writing
  - Writing/editing/creating textbooks and course materials
  - Conducting interviews
  - Translation services
  - Writing a computer program
  - Web site design
  - Photography

**Other points of note:**

- A corporation may only be engaged to provide services if the ICON Questionnaire determines that it is appropriate to do so.
- If the ICON Questionnaire determines that it would be inappropriate to engage a corporation because the substance of the arrangement is that of an employment arrangement between the worker and the University, an employment contract must be entered into between the worker as an individual and the University.
- The fact that a worker is a **sole-proprietor** or a partner in a partnership **does not** in itself prove that an independent contractor relationship exists, regardless of whether the sole-proprietor or partnership has a business number and/or a GST/HST registration number. The question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.
- Independent contractors should seek independent tax advice.

**Note:** *Payment for products or goods is not considered employment income and therefore must be processed as a payment to a business. Arrangements including both services and products will be assessed on a case by case basis.*

In the case of any work performed by a non-resident of Canada or if work is to be performed outside of Canada, please consult Human Resources/Payroll (for employment relationships) or **icon@uwaterloo.ca** (for independent contractor relationships) for advice on unique compliance scenarios applicable to such workers, including withholding tax requirements.
Assessment using the ICON Questionnaire

Departmental Responsibilities
It is the department's responsibility to ensure that appropriate evidence including the ICON, and a contract signed by parties approved in Procedures 1 (Contracts and Agreements – Excluding Research) and 1A (Contracts and Agreements – Research) has been gathered to support the position that the University has engaged an independent contractor.

There are serious consequences if an employment relationship is mistakenly classified as an independent contractor relationship and the University pays the worker as an independent contractor.

Individuals completing the University portion of the questionnaire are acting as agents of the University and are therefore responsible for ensuring the answers are factually correct and that they obtain as complete and accurate of information as possible to help ensure that determinations will be appropriate. Departments need to ensure that the proposed relationship is consistent with the answers in the questionnaire and that the contract, when put in place, is also consistent with the answers in the questionnaire.

Assessment Steps

Complete the following steps if you are:

• Seeking to engage an independent contractor (rather than seeking to engage an employee), or
• Seeking to engage a worker who is requesting treatment as an independent contractor (rather than being treated as an employee).

This process applies when you are seeking to engage corporations when:

• We are engaging the services of a specific worker, and
• The specific worker is a shareholder or owner of the corporation being engaged.

1. **Prior to officially engaging the worker**, the Service Types list should be reviewed to determine whether the type of relationship has been deemed employment. If the relationship is employment in nature, then the worker must be engaged as an employee and it is not necessary to complete the ICON Questionnaire. Your Human Resources Advisor can provide further guidance on how to proceed.

2. If the Service Types list does not indicate that the worker must be engaged as an employee and you would like to engage the worker as an independent contractor, access the ICON Questionnaire (the Worker ICON and the Master ICON).

3. Send the Worker ICON Questionnaire (electronically) to the worker to complete the questionnaire.

4. Obtain the completed Worker ICON (in Excel format) from the worker.

5. Complete the University section (questions 21 through 38) on the Master ICON and input the worker’s responses from the Worker ICON into the Master ICON.

6. Review the answers in the fully completed Master ICON for reasonableness, consistency, and completeness to ensure the responses accurately reflect the
Department’s understanding of the work arrangement.

7. When the Master ICON is complete, send it in Excel format to icon@uwaterloo.ca for review.

8. ICON team will advise the Department with respect to their determination on a particular worker via email. If the worker is an individual, Finance will advise you whether the worker is an independent contractor. If the worker is a corporation, the ICON Team will advise you whether it is appropriate to engage the corporation (who will be an independent contractor) or whether the specified worker of the corporation should be engaged as an employee of the University. If a worker is determined to be an independent contractor, the ICON Team will also provide an ICON number for the piece of work being done that must appear on correspondence (i.e. invoices).

9. ICON team will acknowledge emails as soon as possible and will endeavor to answer all questions and make a final determination within two (2) weeks of receiving a fully completed Master ICON, depending on the volume and complexity of requests received. Departments planning to engage workers must leave sufficient lead time to allow ICON team to make its determination on the status of a worker.

Post-Determination Actions

1. If, following ICON team’s review, the worker has been determined to be an employee, your Human Resources Advisor can provide guidance on how to proceed.

2. If, following ICON team’s review, the worker has been determined to be an independent contractor

   a. If the value is under $5,000 in annual billing, and the work is not Consulting*, you can proceed to engage the worker as an independent contractor. A contract for service outlining the terms and conditions between the University and the worker (e.g. a sole-proprietor, partnership or corporation) should be in place. Procurement and Contract Services can provide guidance with the contract.

   * Bill 122 demands 3 quotes for all consulting work, regardless of the dollar value. Procurement & Contract Services must be contacted for assistance with the contract competition process.

   b. If a contract will be established (any value), if the amount to be paid will be over $5,000 in annual billing, or if the work is Consulting, contact Procurement & Contract Services for assistance with the contract process.

   c. Please note that independent contractors must provide proof of the required liability insurance** and must have WSIB coverage (or be exempt from WSIB coverage).

   ** Consistent with University insurance practices, independent contractors are required to provide:

   • A general liability certificate of insurance with at least a $2,000,000 per occurrence limit, including University of Waterloo as an additional insured.
   • An owned and/or non-owned automobile certificate of insurance with at least a $2,000,000 per occurrence limit for any vehicles being driven onto University of Waterloo property.

Independent contractors may also be required to provide other certificates of insurance as
deemed necessary by University of Waterloo; for example, a professional liability certificate of insurance with at least a $2,000,000 per occurrence limit, including University of Waterloo as additional insured.

Additional guidance regarding insurance requirements can be obtained from Finance.

d. Any invoices from independent contractors must include the worker’s HST/GST number (if applicable). Where the worker is registered for HST/GST this amount must be shown separately on the invoice.

e. Ensure that all invoices issued by the contractor with respect to the work completed under a particular ICON number include a reference to the ICON number issued by the ICON Team with respect to that piece of work being done.

f. If the independent contractor is being paid from a research grant/contract, then the invoice needs to go through the appropriate Research Finance Review process. There is a different review process for UW Faculty members being paid Research Consulting payments on a research grant/contract. See Research Consulting and the Office of Research website for more details.

g. The invoice should be submitted to Finance, Accounts Payable for payment. Invoices submitted without all the required supporting documentation and approvals will not be paid until the required documents are received.

NOTES:

1. The process must be completed for each contract. If the nature of the service changes, a new ICON Questionnaire must be completed and assessed.

2. The ICON Questionnaire is a tool to assist in the determination of employee/contractor status and should in no way be construed as providing tax advice.

3. Judgment should be applied when reviewing the Master ICON. If additional relevant facts come to light after the Master ICON is completed and/or after a determination is made, an independent contractor determination may be revised or reconsidered by the University at any time.

4. Where doubt exists as to the validity of the answers provided, or the accuracy of the determination once completed, additional guidance should be sought. Please email icon@uwaterloo.ca.
Appendix A: Risks of Non-Compliance

Lack of adherence to the following legislative and regulatory requirements may result in costs incurred by the University of Waterloo. The department or Faculty that incurs these financial liabilities will be responsible for the full costs.

1. Statutory risks for non-compliance:
   - *Income Tax Act* (Canada): Failure to deduct and remit required income tax from employment income can result in penalties and interest. The worker may also be reassessed.
   - *Canada Pension Plan*: Failure to deduct and remit required Canada Pension Plan (CPP) contributions can result in the University having to pay both the employee and employer shares, penalties and interest.
   - *Employment Insurance Act*: Failure to deduct and remit required Employment Insurance (EI) premiums can result in the University having to pay both the employee and employer shares, penalties and interest.
   - *Ontario Employer Health Tax Act*: Failure to calculate and remit required Employer Health Tax (EHT) premiums can result in the University having to pay any unremitted premiums and penalties.
   - *Workplace Safety and Insurance Act (WSIA)*: Incorrectly classifying the worker as a contractor can result in the University having to pay any amounts paid to the worker under WSIA in case of an injury, any unremitted premiums and penalties.
   - *Employment Standards Act (ESA)*: Incorrectly classifying the worker as a contractor may result in non-compliance penalties under the ESA.

2. Where an employee/employer relationship is determined to have existed, the University may be liable for paying overtime, vacation pay, statutory holiday pay, pay in lieu of notice, or severance.

3. From the perspective of the worker, if they are incorrectly paid as an independent contractor, their CPP and EI benefits will be understated. As well, the individual may be penalized for claiming deductions to which they were not entitled.
Appendix B: Determination Factors

The CRA looks at 6 major factors when determining whether the terms and conditions of work to be performed constitute an employee/employer or independent contractor relationship:

Control
This test looks at the degree of control the University has over the worker concerning the manner in which the work is done and what work will be done.

- Does the University have the right to hire or terminate, determine the wage or salary to be paid, and decide the time, place and manner in which the work is to be done?
- What kind of reporting relationship exists with the University?
- Are the services provided by the worker similar to those provided by an employee of the University?
- Does the worker have the ability to accept or refuse work from the University?

Generally, an employment relationship exists where the University has the right to direct how, what, where and when the work will be done. It is not necessary that immediate control be exercised at all times, as long as the employer has the right to exercise this control.

Tools and Equipment
This test looks at who generally supplies the tools and resources to do the work. In an employee/employer relationship, the employer generally supplies the equipment and resources required by the employee. In addition, the employer covers the costs related to their use, repairs, insurance, rental and operations. In an independent contractor relationship, workers generally supply their own equipment and supplies and have their own business insurance. However, this alone is not determinative as some workers, such as skilled tradespeople, may be required to supply their own tools, even if they are full-time employees.

Subcontracting Work or Hiring Assistants
This test looks at whether the worker must perform the work personally to accomplish the result outlined in the contract and whether the worker can hire helpers or assistants.

- Is the worker paid to perform a specific task or to obtain a specific result or is he/she paid to put his/her personal service at the disposal of the employer for a period of time?

If the contract provides for a specific result to occur but does not contemplate the services of any particular worker to accomplish that result, then the worker may be an independent contractor (i.e. the University accepts that the worker may subcontract the work). In contrast, if the contract requires the services of one person to be put at the disposal of the University for a fixed or indeterminate time, the relationship may be that of employment.
Financial Risk
This test looks at the degree of financial risk taken by the worker.

- Is the worker responsible for any operating expenses?
- Is the worker financially liable if he or she does not fulfill the obligations of the contract?
- Does the worker bear the cost of any training that may be required to fulfill the obligations of the contract?

Usually, employees will not have any financial risk as their expenses will be reimbursed, and they will not have fixed ongoing costs. Independent contractors, on the other hand, can have financial risk and incur losses because they usually pay fixed monthly costs even if work is not currently being performed. The potential that unforeseen expenses or additional time will have to be absorbed at the worker’s expense without compensation may indicate independent contractor status. It is expected that independent contractors will not be submitting reimbursement requests. Expenses (including but not limited to telecommunications, postage, insurance, etc.) are the cost of running a business and are the responsibility of the independent contractor.

Responsibility for Investment and Management
This test looks at the degree to which the worker is required to make an investment in order to provide the services.

- Has the worker made a capital investment (for example, in facilities and equipment)?
- Does the worker hire, manage, and pay individuals to help perform the work?
- Does the worker advertise their services in the marketplace?
- Is the work assignment in respect of ongoing tasks or to complete a specific project?

A significant investment and the worker’s freedom to make business decisions that can affect his or her profit or loss is evidence that a business relationship may exist.

Opportunity for Profit
This test looks at the extent to which the worker can control his/her proceeds and expenses to realize a profit.

- Is there a chance for changes in profit to the worker providing the service other than what they are being paid or dependent upon how they manage their expenses?

The absence of the potential for profit or loss may indicate an employment relationship. On the other hand, independent contractors have the chance of profit because they can pursue and accept contracts as they see fit, they can negotiate (or unilaterally set) the price for their services, they have the right to offer those services to more than one payer, and they can decrease their expenses in an effort to increase profit.
Appendix C: Definitions

Consulting: The provision of expert or strategic advice that is presented for consideration and decision-making. Per Bill 122 and University Policy 17 - Quotations and Tenders, all consulting arrangements must have three competitive quotes, regardless of dollar value.

Degree Programs: Degree programs consist of sets of courses which together form program curricula that are carefully defined, linked with other programs and which students must follow in prescribed ways in order to qualify for the degree. In many cases, degree curricula are externally accredited. Graduate programs, for example, are accredited by the Ontario Council on Graduate Studies. As a result of the careful linkages that have been established between and amongst programs, the University exercises considerable control and direction over the content and delivery of degree programs.

Employee: An individual who performs services for an employer under a contract of service. The employer has the right to decide where, when and how the work is to be done. Payment is made through the payroll system and requires withholding of source deductions by the University (income taxes, CPP contributions, and EI premiums). Earnings, source deduction withholdings, taxable benefits, etc., are reported on a T4 at year end.

Employment Income: Payments made under an employee/employer relationship. Employment income is subject to income tax, EI and CPP deductions at source. The University is also required to remit EHT and WSIB premiums based on its employee payments. Income is reported on a T4 slip.

Guest lecturer/Speaker: An individual brought in from outside the University to lecture on a specific topic within a course. This person would not deliver more than a few sessions annually. The guest lecturer must be engaged specifically for that person’s expertise on a particular topic rather than as a substitute for a regular instructor. They normally have:

- no marking or grading responsibility;
- no office facilities or support staff provided;
- no ongoing responsibility to the participants attending;
- no appointment with the University; and
- are normally paid a fixed fee.

Independent Contractor: A worker who contracts to do work for another entity according to his or her own processes and methods; the contractor is not subject to the payer’s control except for what is specified in a mutually binding agreement for a specific job. The ICON Questionnaire must be completed to assist in verifying independent contractor status. Independent contractors, like any vendor the University transacts with, are required to maintain appropriate liability insurance and WSIB coverage (or provide proof of exemption).

An independent contractor may be an individual, a partnership, or a corporation. Classification as an independent contractor requires the individual/entity providing the service to collect and pay GST/HST, unless they are classified as a small supplier for purposes of the GST/HST, or the service is otherwise exempt from GST/HST.

If the University is contracting with a sole-proprietor/partnership and the work can be done by any one of a homogeneous pool of workers employed by the business, then it would generally not be considered an employment relationship.
**Non-Resident:** An individual, corporation, trust or partnership that is considered to be resident of a country other than Canada for income tax purposes. When a non-resident is paid for services rendered in Canada, Canadian withholding tax applies unless the non-resident can provide the payer with a “waiver” from CRA. Please contact Payroll/Finance for more information before engaging a non-resident to perform services in Canada. Income paid to non-residents and tax withheld (if applicable) from amounts paid to residents in each calendar year is reported on a T4A-NR form.

**Performing Artists:** Persons engaged to perform, generally for entertainment purposes; for example, musicians, actors, comedians or other similar artists. Professional speakers may be included in this category but are differentiated from guest lecturers in that they generally perform for a broad or general audience.

**Research Consulting:** Research Consulting payments occur when the University enters into a research contract with a third party and a portion of the contract fee paid to the University is allocated by the third party for payments to faculty researchers (typically the Principal Investigator (PI) or co-applicant on the project) for their work on the research.

**Sole-proprietor:** A self-employed person who carries on a business. A sole-proprietor may carry on the business in his or her own name or under a trade name.

**Worker:** The individual performing work for the University whose status (employee vs. independent contractor) has yet to be determined.
Appendix D: Additional Resources

Internal Resources
- Policy 17 – Quotations and Tenders [G]
- Policy 26 – Provision for University Overhead in Sponsored Research Activities (grants, contracts and other research support) [G]
- Policy 49 – Extra-University Activity (Faculty Members) [F]
- Policy 52 – Private Corporations [FS]
- Policy 69 – Conflict of Interest [FS]

External Resources
- CRA Publication T4001 - Employers' Guide - Payroll Deductions and Remittances
- CRA Publication T4002 - Business and Professional Income
- CRA Publication RC4110 – Employee or Self-Employed?
- CRA Publication RC4157 - Deducting Income Tax on Pension and Other Income, and Filing the T4A Slip and Summary
- Bill 122, Broader Public Sector Accountability Act (Ontario)