

FREQUENTLY ASKED QUESTIONS?

Who is an “employee”?

Whether a person is an **employee** for employment tax purposes is determined under the common law “direction and control” rules. Generally, the employer-employee relationship exists when the person (company) for whom the services are being performed has the right to direct and control the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the means by which the result is accomplished. The more integrated or “central” the job is to a company’s operations, the more likely the worker is to be considered an employee. Because education is a primary mission of the University’s exempt function, all persons performing a key aspect of that mission are considered to be employees.

Who is an “independent contractor?”

In an **independent contractor** relationship, the University determines the end product of the services but does not have the right to control the details or means by which the job is accomplished. Independent contractors retain the right to control how they will do the work. Independent contractors also generally provide their own tools, materials, facilities and training to accomplish the job, and often offer their services to the general public.

Can an active Creighton University employee be an independent contractor?

No. If a person currently works for the University, he or she should be paid through the payroll system by using an Employee Action Form.

Is there any difference between a contractor and an independent contractor?

Technically, no. However, in general usage, the term “contractor” usually refers to a company and the term “independent contractor” usually refers to a single person.

Does this apply to students?

No.

How do we treat foreign persons working as independent contractors?

A nonresident alien may be entitled to claim a tax treaty exemption from withholding on some or all compensation paid for personal services. In order to determine if a tax treaty exemption is applicable contact the Payroll Department.

What are the risks to the University for misclassifying employees as independent contractors?

During a payroll audit, IRS or Department of Labor (IRS/DOL) auditors review all Forms 1099 issued by the University to determine what services were provided by independent contractors. If contractors are identified as having been misclassified, back-taxes, penalties and fines will be assessed against the University. Payroll audits can be generated through random selection by the IRS/DOL, or questions/complaints from employees or University contractors who feel that they have been misclassified. In the event that the IRS/DOL questions a classification, the burden of proof is on the University to justify independent contractor status.

Why do we have to have Independent Contractors complete these tax forms?

A W-9 form is a federal form required by the IRS for U.S. citizens the University is paying. It is required so the University can obtain the tax identification number, obtain the payees tax classification status, name as reported to the IRS on tax returns, certify that the payee is not subject to backup withholding, certify they are a US citizen and exempt from FACTA reporting. Because of the certification, it is not sufficient for the University to just obtain a social security number or federal tax ID.

A W8-BEN form is required by the IRS for non-U.S. citizens paid by the University. It is required so the University can certify that they are a citizen of a foreign country, confirm they are not subject to backup withholding and to certify that they have a tax treaty in place between their country and the U.S. that exempts them from withholding.

A W-4NA form is a required Nebraska tax form used for non-Nebraska residents to compute Nebraska income tax withheld from payments for personal services in Nebraska.

If I have a W-4NA why do I need a W-9 also, can't you just get the tax number from one or the other?

Each form has a separate purpose (see above) and goes beyond getting the tax ID number. Also, one is for the State of Nebraska and one is for our federal requirements.

Do we need to get these tax forms if the payment is less than \$600?

Yes, many times the University makes multiple payments from different departments to an individual over the course of a year that add up to more than \$600. Since the University cannot anticipate how much it will pay someone from different departments, it is our practice to get tax forms completed for all payments.

Who is responsible for getting the tax forms?

The Business Service Center is happy to provide this service and obtain the tax forms if given the payee contact information. If a department prefers to work with the payee directly to get the forms they may do so. Within the on-line Employee/Independent Contractor web form, there is a section asking the requestor who they prefer to get the tax information.

The person who is providing a service to the University has requested that we give their payment to another person/company/non-profit, how do we proceed with that?

We can only make a payment to the person providing the service or to their employer. Making the payment to another payee puts the University at risk for not reporting the income properly. If the payee requests this please let them know we will be making the payment to them and as always they can make their own payment to whomever.

How do I pay a standardized patient stipend for a research grant?

Payment to standardized patients will continue to be processed through your Business Service Center specialist. There is no need to complete the on-line Employee/Independent Contractor web form.

How do I pay a research participant stipend for a research grant?

Payments to research participants will continue to be processed through your Business Service Center specialist, regardless of whether the research participant is a University employee or not. There is no need to complete the on-line Employee/Independent Contractor web form.

How do I pay a stipend to a TRIO program participant?

Payment to TRIO program participants will continue to be processed through your Business Service Center specialist. There is no need to complete the on-line Employee/Independent Contractor web form.

Why do I need a contract?

A contract is needed as evidence that one party makes an offer of service and the other party accepts the offer of service. The contract acts as a written explanation of the detailed responsibilities of both parties participating in the project and is protection for both parties in the case of a dispute. Putting the terms of the service and payment arrangements in writing will help prevent future disputes over exactly what was included in the original arrangement.

What do I do if the service has already been provided to the University without a contract in place?

This should never happen. If during the transition this situation occurs, you must complete the on-line Employee/Independent Contractor web form to determine the service provider's status for the services performed prior to any payment being made.

If I already know a service provider is an independent contractor do I still need to complete the on-line Employee/Independent Contractor web form?

Yes. Even though you may be certain that a service provider is an independent contractor, you must still use the on-line Employee/Independent Contractor web form to determine for sure the service provider's status for services being performed.

How do I know when to use or when not to use the on-line Employee/Independent Contractor web form?

You must use the on-line Employee/Independent Contractor web form when any "new" contract is entered into for services being provided by an independent contractor.

Does input into the on-line Employee/Independent Contractor web form substitute for submitting a DPR?

No, the web form collects the specific information necessary to make the "employee vs. contractor" decision and includes some information that is used by the Business Service Center to process a payment to the service provider. However, a payment request through the BSC is still required to initiate a payment to the vendor.

Who signs the Independent Contractor Agreement on behalf of the University?

If it has been determined that your service provider is an independent contractor, you must complete an Independent Contractor Agreement template for signature by the service provider. Once the service provider has signed the agreement, then the new Independent Contractor Agreement must be routed for

signature on behalf of the University via the normal University contract routing procedures found at the Vice President for Finance website: <http://www.creighton.edu/finance/>.

What rank should a Temporary Special Faculty member have?

Instructor.