

**Determination of Employment
Relationship Policy****University Policy:** HR6325**Classification:** Human Resources**Approving Authority:** Vice-President Finance & Operations**Effective Date:** June 2019**Supersedes:** May 1998**Last Editorial Change:** December 2020**Mandated Review:** June 2026**Associated Procedures:** [Determination of Employment Relationship Procedures](#)**Purpose**

- 1.00 This policy provides guidance in determining the relationship of workers who provide services to the university as employees or independent contractors, and the appropriate method of payment.

Scope

- 2.00 This policy applies to the engagement of workers from all sources of funding administered by the university.

Definitions

- 3.00 A **contract of service, or employer-employee relationship**, generally exists when a worker agrees to work for an employer, on a full-time or part-time basis, for a specified or indeterminate period of time, normally in return for wages or a salary. Subject to the principles of academic freedom, the employer has the right to decide where, when, and how the work is to be done.
- 4.00 A **contract for services, or business relationship**, generally exists when a self-employed worker agrees to perform a specific task for a payer in return for payment. The worker is in business in their own right and provides services to other businesses as an independent contractor. The worker is free to choose the means of performing the work and is not normally required to perform the services personally.
- 5.00 **Corporation** is a legal entity within the laws of federal or provincial jurisdiction. A corporation can be either private (owned by one or more individuals) or a public corporation (issues shares to the general public). A corporation is usually identified by an operating name followed by the words "Ltd, Inc., Corp, or Corporation".
- 6.00 **Sole proprietorship** is an unincorporated business that is owned by one person. A sole proprietor has complete responsibility for making decisions, receiving all profits, claiming all losses, and does not have separate legal status from the business.
- 7.00 **Partnership** is an association or relationship between two or more individuals who join together to carry on a trade or business. Each partner contributes money, labour, property, or skills to the partnership. In return, each partner is entitled to a share of the profit or losses in the business. The operation of a partnership is similar to that of a sole proprietor.
- 8.00 **Academic Services** include the provision of instruction, tutoring, marking, course preparation, artistic performances, and academic consulting.
- 9.00 **Policy**
From time to time, services are provided to the university under arrangements other than by way of an employer-employee relationship. Unless the provision of such services is restricted by the university's collective bargaining agreements, the university may contract for these services with an independent contractor carrying on business as a sole proprietor, partnership, or corporation.
- 10.00 The determination of whether an individual is working as an employee in an employer-employee relationship or as an independent contractor can be complex. A number of determining factors at common law have evolved from decisions rendered by the Courts and are found in Appendix 1. These factors are to be reviewed and a checklist completed to assist in the correct assessment of the work relationship prior to entering into a Contract for Services agreement.
- 11.00 Where an employer-employee relationship exists with an individual providing service to the university, the university is obligated by law to take statutory deductions (CPP, EI and Income

Tax) from salary payments, and to pay WorkSafeBC premiums. The University of Victoria will comply with the *Income Tax Act* and follow rules and reporting procedures associated with these source deductions. Payments of employment income are therefore made through the payroll system with the required statutory deductions.

- 12.00 Failure to correctly classify an employer-employee relationship can result in penalties and interest under the *Income Tax Act*, the *Employment Insurance Act*, and the *Canada Pension Act*, for both the university and the individual. The university may be required to assume liability for the retroactive payment of both the employee and employer portions of CPP and EI contributions. Such penalties will be charged to the unit that inappropriately entered into the Contract for Services agreement.
- 13.00 Individuals that provide Academic Services will normally be considered to have an employer-employee relationship with the university. The only exception to this will be when the university enters into a contract for Academic Services with a sole proprietor, partnership, or corporation without an existing employer-employee relationship with the university.
- 14.00 Existing employees of the university who work beyond their normal appointment, whether in or outside of their home unit, will be considered to have an employer-employee relationship with the university for all services provided, and any additional payment will be made through Payroll. Existing employees will therefore not be considered independent contractors in any circumstance.
- 15.00 If a unit is unable to provide sufficient evidence to support a Contract for Services after reviewing the determining factors in Appendix 1, the individual will be considered an employee of the university.
- 16.00 The university will contract with independent contractors when no employer-employee relationship exists, subject to section 9.00 above, using the appropriate university Agreement form that requires the contractor to provide:
 - (a) confirmation of adequate business insurance for the services being provided;
 - (b) confirmation of workers compensation coverage (from appropriate jurisdiction);
 - (c) GST registration number (if not considered a small supplier); and
 - (d) an indemnification of the university from any claim related to the services provided.
- 17.00 Payments to independent contractors are made through Accounts Payable without deductions upon submission of an approved contractor invoice.
- 18.00 If an independent contractor is a non-resident of Canada but providing services in Canada, the university is obligated to deduct non-resident withholding tax unless a waiver is obtained from the Canada Revenue Agency prior to payment.
- 19.00 Questions of interpretation or application of this policy or its procedures should be referred to:
 - Academic Services – to the AVP Faculty Relations and Academic Administration, whose decision shall be final;
 - Non-Academic Services – to Purchasing Services and subsequently to General Counsel, whose decision shall be final.

Authorities and Officers

The authorities and officers for this policy are:

- 1) Approving Authority: Vice-President Finance & Operations
- 2) Designated Executive Officer: Vice-President Finance & Operations
- 3) Procedural Authority: Vice-President Finance & Operations
- 4) Procedural Officer: Executive Director, Financial Services

Relevant Legislation

[Canada Pension Plan, RSC 1985 c C-8](#)
[Employment Insurance Act, SC 1996 c 23](#)
[Income Tax Act, RSC 1985 c 1 \(5th Supp.\)](#)

Related Policies and Documents

[Signing Authority Policy \(FM5100\)](#)
[Purchasing Policy \(FM5105\)](#)
[Determination of Employment Relationship Procedure](#)
[Faculty/Librarian Collective Agreement – Conflict of Commitment](#)

Factors to Determine an Employee or Independent Contractor Relationship

The determination of a worker's employment status is a question of fact. It is not always easy to determine because there is no one test or rule that can be applied. Rather, the determining factors have evolved from decisions rendered by the tax courts over the years. The following factors are those most commonly used in determining whether a worker is an employee or an independent contractor.

1. The level of control / supervision the university has over the worker

Generally, in an employer/employee relationship, the employer has the right to direct and control the employee's method of doing the work by instructing when, where, and how the work will be performed. It is not necessary that immediate control be exercised at all times, as long as the employer has the right to exercise this control. The degree of control exerted may be viewed in light of the following:

- the extent to which the worker is supervised
- the university's right to determine the hours or work and where the work will be performed
- the extent which the worker has the power to delegate or subcontract

2. Whether the worker provides their own tools and equipment to render services

This factor considers the ownership of facilities, tools and the necessary support services to complete the task. In a university environment, tools include computers, communication equipment such as telephone, photocopiers, laboratory equipment, university books, and other equipment maintained by the university. Dependence on the university's assets and facilities points to an employer/employee relationship.

3. Whether the work in question is 'integrated' into the university's business

An employee generally integrates their work activities to the business activities of the employer, whereas an independent contractor generally acts independently from the employer. Performing work which is similar to work performed by university employees, being on the university's telephone directory, having university business cards, a university email address, participating in employee social activities are all indicators that a worker is an employee. In contrast, an independent contractor is a worker who is hired to accomplish a specific job in a given period of time. They are therefore not part of the university's structure.

4. The opportunity for profit or degree of financial risk taken by the worker

An independent contractor typically assumes the risk of loss that may result from unforeseen events or problems that occur during the course of the work (those costs not included in the contract for services). Conversely, if the work is completed sooner or more efficiently than expected, the independent contractor may increase their profit. In essence, an independent contractor stands to benefit directly from productivity gains or more efficient delivery, but will also bear the risk of failure to deliver or undue delays in delivery. In an employer-employee relationship, the chance of profit and risk of loss resides with the university. Indicators in relation to the opportunity for profit or loss include:

- The extent the worker can negotiate or set price for their services
- Whether the worker has the right to offer services to others outside the university
- Whether the worker incurs expenses to carry out the terms of the contract
- Whether the worker is paid regular amounts at set intervals

5. Other factors

- a. The intention of the parties can be a relevant factor.
- b. If the worker occupies a recognized position at the university, particularly an administrative position, they will generally be considered employees.
- c. Does the worker perform tasks that are covered by a collective or any other agreement? If yes, the worker is likely an employee.
- d. Is the worker teaching? Teachers are almost always considered employees.
- e. Is the worker engaged through a professional corporation, where the corporation receives the payment rather than the worker? If yes, the worker is likely an independent contractor.

No one factor will be determinative; rather, the whole arrangement must be considered. In certain cases, some factors will be more relevant than others. Even where the facts appear to be the same, the CRA and tax courts have sometimes arrived at different conclusions.

Determination of Employment Relationship Procedures

Procedural Authority: Vice-President Finance & Operations
Procedural Officer: Executive Director, Financial Services

Effective Date: June 2019
Supersedes: New
Last Editorial Change:

Parent Policy: [Determination of Employment Relationship Policy \(HR6325\)](#)

Purpose

- 1.00 The purpose of these procedures is to provide guidance to individuals entering into or approving Contracts for Services with independent contractors.

Procedures

- 2.00 A Checklist for Determining Employment Status should be completed prior to engaging any independent contractor. The checklist should be completed and signed by both a university representative and the worker to ensure both parties are in agreement with respect to the nature of the work required.
- 3.00 Existing employees of the university who work beyond the expectations of their normal appointment, whether in or outside of their home unit, will be considered to have an employer-employee relationship with the university for all services provided and will not be considered an independent contractor. Any additional payments must be made through Payroll. For Academic Services, use the Special Payments Form. For incidental non-academic work (typically 5 hours per week or less), use the Incidental Work Form. For non-academic work in excess of 5 hours per week, Human Resources should be consulted to confirm eligibility and determine appropriate forms. Payments will be subject to source deductions for Income tax, CPP, and EI, and will be reported on a T4 Statement of Remuneration Paid.
- 4.00 For workers who are not university employees, when the Checklist indicates the existence of an employer-employee relationship, the worker will be paid through Payroll using an approved Appointment Recommendation Form. Payments will be subject to source deductions for Income tax, CPP, and EI, and will be reported on a T4 Statement of Remuneration Paid. Payments will also be assessed WorkSafeBC premiums.
- 5.00 When no employer-employee relationship exists and the contract is for Academic Services, the following documents are to be completed prior to commencement of the work and submitted to the approval authority as required by the University Signing Authority Policy (FM5100) using the university's electronic Webreq system:
- a completed and signed Checklist for Determining Employment Status;
 - a current CV; and
 - an unsigned, completed Services Agreement Form – Academic Services.
- 5.01 Upon approval by the approval authority, the signed contract is forwarded to Accounts Payable. Payment to the contractor will be made by submitting an approved invoice to Accounts Payable under the terms of the Services Agreement and a T4A will be issued to sole proprietors who are not registered for GST.
- 5.02 Subsequent contracts following the same terms and conditions as an original contract, within two years of the original start date, may be approved by the approval authority by submitting a completed, unsigned Services Agreement Form – Academic Services along

with a confirmation that the CV and checklist submitted with the original contract still apply.

5.03 Questions of interpretation or application of this policy or its procedures as they relate to Academic Services should be referred to the AVP Faculty Relations and Academic Administration whose decision is final.

6.00 When no employer-employee relationship exists and the contract is for Non-Academic services:

(i) For all contracts to be paid from Sponsored Research funding, the Checklist for Determining Employment Status and the completed, unsigned Services Agreement - Non Academic Services should be forwarded to Research Accounting using the university's electronic Webreq system prior to commencement of the work for confirmation that subcontractor expenses are allowable under the terms of the funding source, obtaining prior approval from the funder, when required, and appending appropriate terms and conditions to the Services Agreement-Non Academic Services as may be required by the terms of the funding source. The Webreq and attached documents will then be forwarded to Purchasing to sign the Services Agreement and issue a purchase order.

(ii) For contracts below the university's purchase order threshold (currently \$5,000), the unit is to complete the Checklist for Determining Employment Status and sign the completed Services Agreement – Non-Academic Services. Once the contract is approved a copy is to be sent to Accounts Payable. Payment to the contractor will be made by submitting an approved invoice to Accounts Payable under the terms of the Services Agreement and a T4A will be issued to sole proprietors who are not registered for GST.

(iii) For contracts above the university's purchase order threshold (currently \$5,000) the following documents are to be completed prior to commencement of the work and submitted to Purchasing Services using the electronic Webreq system for approval:

- A completed purchase requisition (WebReq)
- A Directed Purchase Request form (if applicable)
- A completed Checklist for Determination of Employment Status
- A completed, unsigned Services Agreement – Non Academic Services

6.01 If a Request for a Directed Purchase is approved by Purchasing, a Purchase Order will be issued and the Services Agreement – Non-Academic Services will be signed.

6.02 If no Request for Directed Purchase is provided or a request is not approved, Purchasing will arrange a competitive process to identify a contractor to provide the requested service, working with the originating unit. Once a contractor is selected a Purchase Order will be issued and a Services Agreement signed. Payment to the contractor will be made by submitting an approved invoice to Accounts Payable under the terms of the Services Agreement and a T4A will be issued to sole proprietors who are not registered for GST.

6.03 Questions of interpretation or application of this policy or its procedures as they relate to Non-Academic Services should be referred to Purchasing Services and subsequently to General Counsel, whose decision is final.