

Independent Contractor or Employee?

2015 Professional Development Institute



Colorado State University

Agenda

- What's the Difference?
 - Employee
 - Independent Contractor
- Before Work Begins
- IC Form Guidance
 - Independent Contractor & PERA Retiree
- Tax Planning



Colorado State University

Employer Obligations

- Federal and state tax and labor laws require Colorado State University to ensure that individuals who provide services are properly classified as an employee or an independent contractor.
- An art, not a science – careful review of individual circumstances needed prior to work being performed.



What's the Difference?

Employee

- Anyone who performs services for you is your employee ***if you can control what will be done and how it will be done.***

Independent Contractor (IC)

- A natural person, business, or corporation that provides goods or services to another entity under terms specified in a contract or within a verbal agreement



Three characteristics viewed by IRS:

- Behavioral Control – Whether or not CSU has a right to direct or control how the work is done through instructions, training, or other means.
- Financial Control – Whether or not CSU has a right to direct or control the financial and business aspect of the worker's job.
- Type of Relationship – How the workers and business owner perceive their relationship.



Employee

- CSU directs & controls the work
 - When, where & how the work is to be done
- Worker receives instruction & training from CSU
- Continuing relationship between worker & CSU
- Set hours of work
- Payment by time, not by job
- CSU furnishes tools, equipment & supplies
- Worker can terminate services at any time



Colorado State University

Independent Contractor (IC)

- Engaged in independently established trade
- Offers services to multiple clients
- Not providing services similar to CSU employee
- Not full-time or occurring on regular basis
 - Billed by job, not by hour
- Free from CSU's control & direction
- Furnishes knowledge, supplies, equipment & tools
- Receives no training, supervision, or instruction from CSU



Colorado State University

Colorado Code of Ethics Statute

(CRS 24-18-201)

- Prohibits state employees from having an interest in any contract made by them in their official capacity or by anybody, department, or board of which they are members or employees.
- A former employee may not, within six months following the termination of his/her employment, contract or be employed by an employer who contracts with a state department or any local government involving matters with which he/she was directly involved with during state employment.
 - Contracts with former CSU or State employees may require retirement plan contributions



Colorado State University

Current Employees

- Payment outside of normal base salary should be requested as supplemental pay
 - Careful consideration for non-exempt employees. May need to be paid overtime for work beyond 40 hours.
 - Approval before work is completed
- Students cannot be paid supplemental pay
 - Concurrent work assignment
 - Work hours on primary assignment
- International Students cannot be retained as ICs



Before Work Begins

Assess Need – Employee or IC?

- Where would I find someone to perform this work?
- Does someone at CSU provide this service?
- What is the duration of the task?
- What level of control is needed on how services are carried out?



Is the IC Classification Appropriate?

- No
 - Work must be performed by employee
- Yes
 - Complete IC form with selected individual
 - Send signed IC form to Accounts Payable (AP)
 - AP will review IC form to confirm status
 - If IC status is confirmed, department can establish contract and create Vendor in Quali
 - IC's are paid via the Disbursement Voucher or Purchase Order



Form Guidance

- Found on BFS – AP webpage at <http://busfin.colostate.edu/ap.aspx>
- PERA Retiree identification is **CRITICAL**
- Not all cases are black and white so scrutiny and discussions may be conducted between AP and Payroll based on answers to questions on the IC form, prior to approval and start of work



Colorado State University

PERA Retirees as Independent Contractors

- Department responsible for PERA Retiree identification
- Monthly payments will be collected from the department to cover IC PERA Retiree contributions
- Payroll to process payments from same account used to pay the individual



Tax Planning

- Independent Contractor
 - No income or FICA taxes withheld
 - Receive Form 1099 if total payments for the calendar year are \$600 or greater
 - Worker is responsible for any applicable tax reporting and payments
- Employee
 - Payments are taxable wages subject to applicable income and FICA withholding
 - Receive Form W2 at end of calendar year

Employer and/or Employee can be subject to IRS fines and penalties as a result of misclassification status.



Colorado State University

Additional Considerations

- If individual is to be paid through payroll, they are an employee and we must comply with all required employment practices:
 - FLSA
 - I-9
 - Background check policy
 - Search/Hiring processes
 - Benefits



QUESTIONS?

BFS-Accounts Payable

Genevra Scott 491-2040

Beth Fritzler 491-2097

BFS-Tax Services

Matt Wills 491-6242

HR-Payroll

Tracy Hutton 491-0540



Colorado State University