

OFFICE OF THE CONTROLLER

Independent Contractor vs. Employee Classifications

October 2026

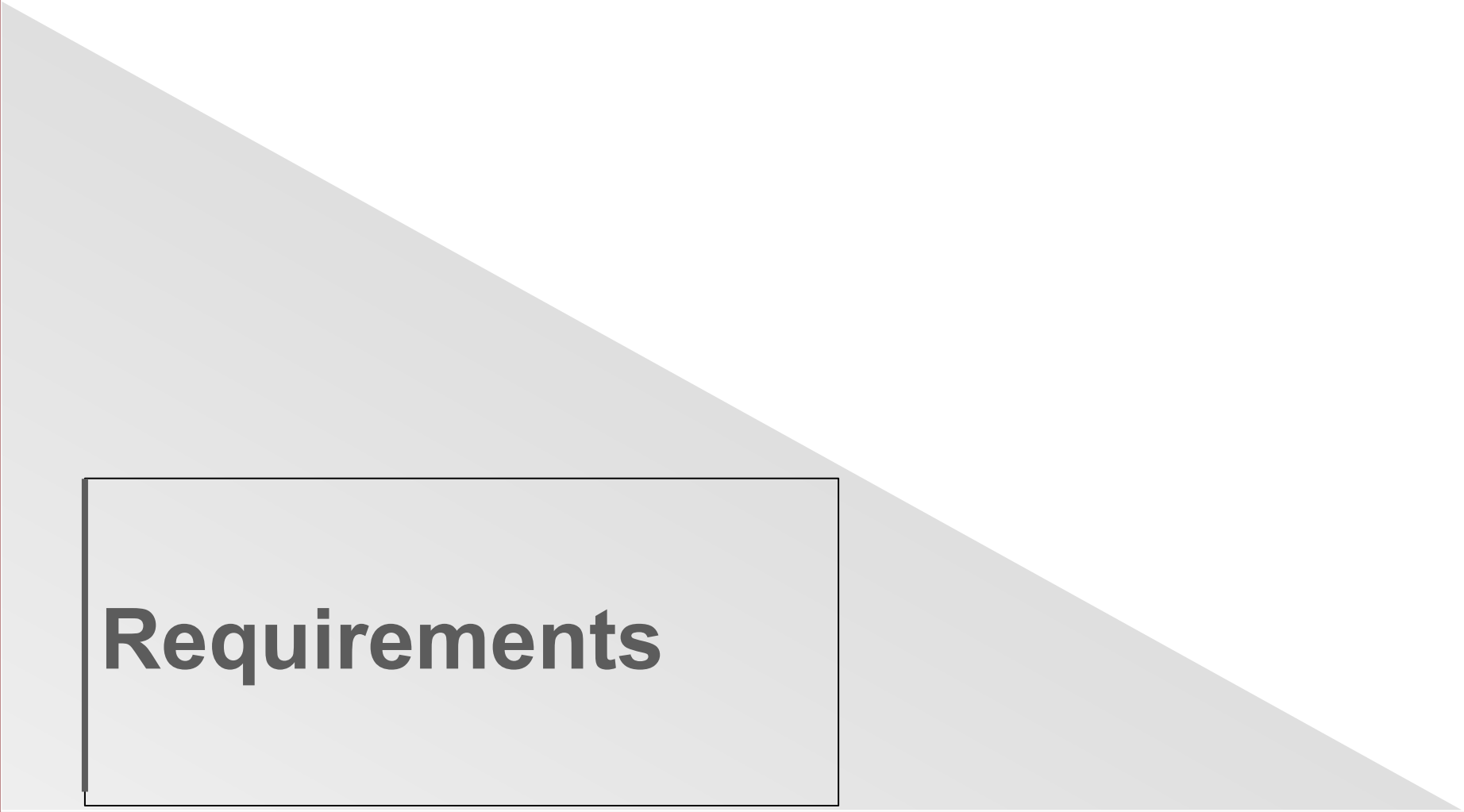




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Requirements

Who Sets Classification Standards?

Federal, including regulations from both the **Internal Revenue Service (IRS)** and **U.S. Department of Labor (DOL)**, require employers to properly classify its workers as either employees or independent contractors.

State law, including both **SC Code of Law § 41-27-230(1)(b)** and **SC Code Regs 47-8**, also reference the factors for determining employer-employee relationships.

University **policy** and **procedure** detail the regulatory requirements and the institution's approach to ensuring compliance.



Why Does Classification Matter?

Independent Contractor vs. Employee does not simply represent a payroll label – the classification has significant implications and drives legal, tax, and workplace obligations.

Misclassifying a worker as an independent contractor can give rise to significant liability, both in terms of cost and risk exposure. Among other implications, it can lead to back payroll taxes, interest, penalties, unpaid overtime/minimum wages, benefit claims, and workers' compensation or unemployment assessment, plus compliance, reputational, and audit risks.



General Definitions

Employee: An individual legally employed by the University in any official capacity (and hired through the Division of Human Resources), including faculty, staff, students, salaried and temporary appointments, etc. Employees receive compensation for work or services (1) in which the University has the right to supervise and control the manner of performance and (2) from University-controlled funds, regardless of the source of the funds.

Independent Contractor: An individual or firm* who provides services to the University but is not an employee.

** This includes services performed through a single-member LLC, sole proprietorship, or other similar business that is owned, controlled, or operated by the individual performing the services.*



General Differences

Area	Employee	Independent Contractor
Payment Method	Hired through the Division of Human Resources and paid through the Payroll Department	Paid through Accounts Payable after registering in the Supplier Self-Service Portal
Payroll Taxes	Employer withholds tax and employee FICA, pays employer portion of FICA and unemployment taxes	Worker generally pays their own income and self-employment taxes
Tax Reporting	Form W-2	Typically Form 1099-NEC
Wage/Hour Laws	Usually entitled to minimum wage, overtime, and required pay practices	Generally outside those employee protections
Benefits and Leave	May be eligible for benefits, paid leave, and benefit-plan protections	Generally not entitled to employee benefits
Workers' Compensation and Unemployment	Often covered, depending on the law	Usually not covered as an employee

Totality of Circumstances Approach

The U.S. DOL sets forth a six-factor economic reality test for navigating employee vs. independent contractor classifications:



Nature/Degree of Control

Does the company control when, where, and how the worker performs the work?

Skill and Initiative

Will the worker require company-provided training to perform the work?

Permanence

Is the relationship ongoing, or temporary and project-based?

Integral

Is the worker's service a central part of the company's business?

Profit/Loss Opportunity

Does the worker have the ability to earn profits or suffer losses through their own business decisions?

Investment

Will the worker invest their own tools, equipment, workspace, etc. to complete the work?



The Intent



All relevant factors must be weighed. Holistic consideration, based on the **nature of the working relationship**, must occur to determine the appropriate classification.



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Common Law Rules

The IRS' common-law rule approach, which addresses the following question, should also be considered:

*Does the business have the **right to control** not just the result, but also the **means and details** of how the work is performed?*

Behavioral Control

The right to direct the worker and the work performed

e.g., Instructions, training, required methods, supervision

Financial Control

Whether the worker is independently in business

e.g., Investment, reimbursed costs, profit/loss opportunity, market availability

Relationship of Parties

The practical nature of the engagement

e.g., Benefits, permanency, any employee relationship, termination rights, any written agreements



Employee Relationship Considerations

Consider any existing relationship with USC before deciding how to pay for the services.

Employment History



Assess whether the proposed services are **separate, unrelated, and distinct**.

IMPORTANT

Dual employee and independent contractor status is rare. Strong documentation and University Controller approval are required.



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Employee Relationship Considerations

For a prior, current, or upcoming USC employee, focus on the nature of the services. A different payment preference does not change the classification.

Are the proposed services related to the individual's normal, past, or planned duties?

YES

Employee likely appropriate

Process through HR and Payroll

NO

Further assessment required

Complete the checklist and evaluate all facts and circumstances.



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Credit-Course Instruction

For institutions accredited by the Southern Association of Colleges and Schools Commissions on Colleges, there is a requirement to employ competent faculty and justify the qualifications for the courses they teach.

This accreditation implication primarily centers on **institutional accountability** – the University must be able to document and control who is qualified to teach, the course assignment, credentials, curriculum expectations, evaluation, academic integrity, and student-learning oversight.

When paired with the fact that academics is the University's **core function**, an individual teaching courses for credit functions like an employee from a classification perspective.



Real World Implications

Vizcaino v. Microsoft Corp. (9th Circuit 1997) – IRS Case

- Microsoft classified certain workers as independent contractors and excluded them from employee benefit plans
- Microsoft and workers signed agreement saying nothing in the agreement should be construed as creating an "employer-employee relationship"
- Many worked onsite for extended periods, performed work alongside employees, and used Microsoft owned equipment
- Court determined workers were common-law employees
- Worker classification depends heavily on control and integration into the business, not on the title given or contract signed by the worker



Key Lessons from the Case

Worker classification is determined by the **facts and circumstances** of the relationship – not job title, contract language, payment method, individual preference, or cost savings.



This is why the University requires departments to complete a checklist prior to engaging an individual to perform services – to understand the facts and circumstances.





Checklist Walkthrough

What is the University's Approach to Compliance?

The Independent Contractor Checklist documents the classification decision before work begins.



Required before contracting with an individual.

Keep the completed checklist with the documentation supporting Accounts Payable Payments



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Why the Checklist Exists

The checklist helps departments . . .

- Gather consistent facts
- Apply the totality-of-circumstances approach
- Identify engagements that need additional review

The checklist does not . . .

- Justify a preferred result
- Replace careful judgment
- Make one factor decisive

The checklist should be answered based on actual facts, not assumptions or preferences.



Who Should Complete the Checklist?

The individual completing the checklist must have sufficient and appropriate knowledge of the proposed engagement. The individual should:

- ☑ Be familiar with University Policy and Procedure FINA 2.40,
- ☑ Understand the services to be performed,
- ☑ Understand the working relationship, including how the individual will interact with the University,
- ☑ Be familiar with the department's expectations for the engagement
- ☑ Be able to accurately answer questions regarding supervision, scheduling, equipment/resources, payment arrangements, and other relevant aspects of the relationship.



New Independent Contractor Checklist

A new electronic checklist has been developed through Jotform to:

- ✓ Eliminate paper forms
- ✓ Utilize conditional logic for more efficient form completion
- ✓ Ensure more comprehensive coverage of regulatory requirements
- ✓ Provide clearer decision points and action items
- ✓ Assist with record retention – *a copy of the form will be emailed to the initiator after submission*
- ✓ Improve central monitoring and tracking ability



Often Forgotten Factors

Procurement – If the aggregate cost of the services exceeds \$10,000, the Purchasing Department needs to be proactively contacted to ensure the services are procured in accordance with applicable competitive solicitation requirements, and a Purchase Order is established. Refer to [BUSA 7.00 \(Purchasing\)](#).

Contracts – A written agreement is strongly recommended for all independent contractor engagements to clearly describe the services to be performed. Otherwise, the substantiation for the classification decision could be questioned. Refer to [BTRU 1.04 \(Authority to Sign Contracts\)](#).



Reminders Before Starting the Checklist...

- ! The person completing the checklist must have a thorough understanding of the proposed working relationship and services to be provided.
- ! Responses must reflect the actual facts, circumstances, nature of the relationship and services, not merely title, historic classification, contract language, or preferred result.
- ! Many assessments involve facts and circumstances that don't fit neatly into a single category and involve considerable "gray" area. When these situations are encountered, the questions should be answered thoughtfully and in good faith based on the best option possible.



Checklist Structure



Purpose: Requirements, rationale, policy/procedure references, instructions



Service Provider Information: Basic details identifying the individual and services to be performed



Section 1 – Employee Relationship Factors: Evaluates the working relationship and provided services against applicable employee-related factors



Section 2 – Core Classification Factors: Evaluates the working relationship and provided services against IRS and US DOL factors



Section 3 – Decision Point: Indicates Employee Treatment, Independent Contractor Treatment, or Controller's Office Review is Required



Section 4 – Certification and Acknowledgement: Departmental form initiator attests to the accuracy of the information provided



Submission Confirmation: The departmental form initiator receives a copy of the completed form – it should be retained for documentation purposes.



Conditional logic is built into Sections 2 and 3; based on your responses, some questions may not require completion.



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Accurate Information is Key!

- The checklist **Decision Point** is driven by the provided responses – if information is inaccurate, material facts are omitted, or the actual working relationship is different from what's reported, the resulting classification will be inaccurate.
- When Controller's Office review is required, the information provided by the department is relied upon. The department is the party with firsthand knowledge of the relationship and services – the Controller's Office cannot make assumptions or gather information for departments.



Walkthrough

New! Independent Contractor Checklist



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Scenarios

Scenario 1

- ✓ A retired USC employee is returned to perform a service and has requested to be paid as an independent contractor.

Facts and Circumstances

- Services are integral to USC's operations
- USC controls work expectations
- Work continues over an extended period
- Individual performs substantially the same duties performed previously as an employee (prior to retirement)



Scenario 2

- ✓ A department wants to hire an individual as an independent contractor to teach a semester-long course offered for academic credit.

Facts and Circumstances

- USC determines the course content and requirements
- USC establishes the academic calendar deadlines
- Services are integral to USC's educational mission
- Work is performed within an established academic framework



Scenario 3

- ✓ A department wants to hire a professional website designer to redesign a department website.

Facts and Circumstances

- Individual has multiple clients
- Individual works independently, without direction from USC
- Individual provides own equipment
- Individual determines how work is completed
- Individual is paid a fixed amount upon project completion
- Engagement ends when project is completed



Scenario 4

- ✓ A department wants to hire a researcher to assist with a federally sponsored grant.

Facts and Circumstances

- Individual has an LLC and performs similar work for several universities
- Individual uses their own equipment, computer, and software
- The engagement is tied to a specified 6-month project
- The department needs the researcher available during USC's normal business hours
- Weekly meetings with USC personnel are required
- USC will review and approve the work method throughout the project
- Services are closely integrated with the department's ongoing research activities

*When involving a sponsored award, the checklist should be completed during the proposal stage, **prior** to proposal submission and award execution.*



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Dos and Don'ts

Best Practices – Dos!

- ✓ Classify employees based on consideration of all the relevant facts and circumstances of the provided services and working relationship, as captured in the checklist
- ✓ Proactively complete the checklist **before** engaging with the individual
- ✓ Retain sufficient documentation to support the classification decision
- ✓ Seek guidance when facts and circumstances are unclear or mixed
- ✓ Reassess the classification if the scope, duration, level oversight changes, or nature of working relationship changes



Pitfalls – Don'ts!

- ✗ Classify an individual as an independent contractor to satisfy personal preference – because they asked you to or because it benefits them from a personal tax perspective
- ✗ Assume the proper classification and skip the checklist
- ✗ Apply previous classification decisions to new engagements rather than completing an appropriate analysis
- ✗ Fail to retain sufficient documentation to support the classification decision
- ✗ Fail to gather the relevant facts and circumstances of the provided services and working relationship prior to completing the checklist
- ✗ Retroactively complete the checklist (after services have been rendered and payment has occurred)





Resources

Independent Contractor Resources

- **Policy FINA 2.40 – Independent Contractors**
- **Procedure FINA 2.40 – Independent Contractors**
- **FINA 2.40 Appendix A – Independent Contractor Checklist**
- **FINA 2.40 Appendix B – Foreign Source Statement**

For questions, contact the Controller's Office Tax Team at
tax@mailbox.sc.edu



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Referenced Policies and Procedures

- **Policy FINA 2.12 – Accounts Payable**
- **Procedure FINA 2.12 – Accounts Payable**
- **Policy FINA 2.14 – Acquisition and Payment of Goods and Services**
- **Procedure FINA 2.14 – Acquisition and Payment of Goods and Services**
- **FINA 2.14 Appendix – Procure-to-Pay Business Cycle Flowchart**
- **Policy FINA 7.10 – Tax Management**
- **Procedure FINA 7.10 – Tax Management**
- **Policy BUSA 7.00 – Purchasing**
- **Policy BTRU 1.04 – Authority to Sign Contracts**
- **Policy ACAF 1.00 – Recruitment and Appointment of Tenured, Tenure-Track and Professional-Track Faculty**
- **Policy ACAF 1.01 – Recruitment and Appointment of Academic Administrators**
- **Policy HR 1.24 – Recruitment and Appointment of Classified, Unclassified, Research Grant, and Time Limited Employees**
- **Policy HR 1.25 – Appointment for Non-US Citizens**
- **Policy HR 1.86 – Student Employment Policy**





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GATEWAYS FOR: STUDENTS FACULTY & STAFF ALUMNI PARENTS & FAMILIES CALENDAR MAP DIRECTORY APPLY GIVE

SEARCH SC.EDU

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Office of the Controller

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Grants and Funds Management

Compliance and Tax Management

Payroll Department

Operational Management and Reporting

External Financial Reporting and Transparency

Resource and Training Toolbox

Business Manager

Grant Administration

Principal Investigator

Policies & Procedures

Tax Cuts and Jobs Act 2017

Forms

Newsletters

PeopleSoft Finance Training Schedule

Policies and Procedures

The University-wide [Policies and Procedures Manual](#) is maintained by the Office of the Provost. The Controller's Office is the owner and designated administrative office for many of those policies, which are detailed below along with any accompanying procedures.

Policies detail [what](#) is required by federal, state, local, and/or University requirements and best practices, whereas accompanying procedures detail [how](#) compliance with those requirements are achieved. Additional supplemental policies and procedures can be developed at the unit or department level, but they cannot contradict the overarching policies and procedures of the University.

Expand all

Chart of Accounts

General Accounting

Treasury Management

Compliance

Travel and Reimbursement

Capital and Assets

Sponsored Awards

Payroll

Where to Find the Resources

For Policy and Procedure resources, visit the [Policies and Procedures](#) page found in the Resource and Training Toolbox section.



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PeopleSoft Finance Training Schedule

Listserves

Social Media

Contact Us

Business Manager

The role of each Business Manager at the University of South Carolina varies across each college and department. Each Business Manager handles several responsibilities that directly influence the success of their departments and the University overall. They provide business expertise on a variety of topics including, but not limited to budget, expenses, supplier onboarding, transaction corrections, and University policies and procedures.

Below is a list of tasks a Business Manager may be responsible for within their college/department. Sections include links to training resources that support each task.

Note: Each year the Controller's Office provides refresher trainings starting the month of February thru the end of April. Registration links for all scheduled trainings are sent to our BIZMANAGER listserv end of January, provided in our monthly newsletter, and in a prior week reminder email. On demand training can be found in the sections below.

Account Funding Change

AP Uploads

Business Expense Prepaid Cards

Cash Advances

Cost Transfer

Departmental Deposits

Employee Reimbursement (Non-travel)

Endowments

Finance Intranet

Expand all

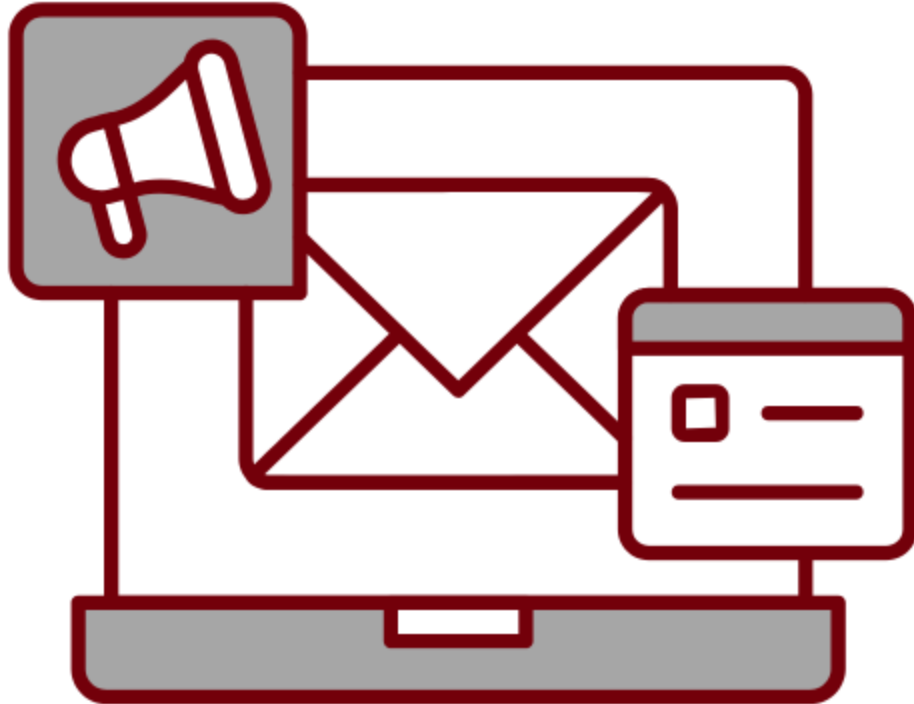


Where to Find the Resources

For training resources, visit our [Business Manager](#) page in the Resource and Training Toolbox section.



Contact Us



For specific questions, please visit our [website](#) to find the appropriate contact.



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Questions?



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THANK YOU!

Office of the Controller



Alone, we can do so little; together,
we can do so much.

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