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Determination of a Worker's Status Procedure

Office of Administrative Responsibility:	Associate Vice-President (Human Resources, Health, Safety and Environment)
Approver:	Board of Governors (Board Human Resources and Compensation Committee)
Scope:	Compliance with this University policy extends to all academic, support and excluded staff, postdoctoral fellows, and academic colleagues as outlined and defined in the Recruitment Policy (Appendix A and Appendix B : Definitions and Categories).

Overview

The University of Alberta will comply with the Income Tax Act. Where an employment relationship exists, the University is obligated to take statutory deductions (CPP, EI) and tax from salary payments. The University of Alberta will follow all rules and reporting procedures associated with these source deductions.

Failure to classify an employment relationship correctly can result in interest and penalties under the *Income Tax Act*, the *Employment Insurance (EI) Act*, *Workers Compensation Act* and the *Canada Pension Plan (CPP) Act* for both the University and the individual. If the relationship is incorrectly classified, the University may be required to assume liability for the retroactive payment of both the employer and employee portions of the CPP and EI contributions.

Determining a worker's status - Employee or Independent Contractor - is a complex issue and the distinction between an employee and an independent contractor is not always obvious. Even with tests supplied by Canada Revenue Agency (CRA), absolute rules are difficult to establish.

Generally, someone is an employee when:

- The University directs and controls how the work will be done.
- The University provides the facilities and other resources.
- The University runs the risk of loss.
- The work is related to the University's core business of teaching and research.

Generally, someone is an independent contractor when:

- The individual determines the work process to meet the University's established outcome.

- The individual provides the facilities, equipment and other resources.
- The individual runs the risk of loss.
- The work is not related to the University's core business of teaching and research.

University staff initiating **contract for services** with individuals or businesses are responsible for ensuring that the appropriate form of engagement has been undertaken and is consistent with this procedure. A contract for services is not automatically warranted just because a company operates as a **corporation** or an individual operates as a **sole proprietorship** (operating under a registered trade name).

The University of Alberta and an individual cannot make the determination on an employment relationship simply by engaging in a contract that stipulates that the individual is not an employee. An individual with a ruling from CRA regarding their employment status cannot apply this ruling to other seemingly similar situations, as small changes in context may change the decision of CRA.

This procedure does not apply to project management, design, maintenance and trade services for facility construction.

Purpose

To provide standard criteria to make determinations as to whether an employer/employee relationship does or does not exist.

To safeguard the University and the individual from the potential liability associated with the wrongful categorization.

PROCEDURE

1. CANADA REVENUE AGENCY CRITERIA

CRA uses four criteria in determining whether an employment relationship exists. The four standard tests will not necessarily be given equal weighting in determining the type of contract.

The four standard tests are:

- a. Control – the ability of the individual to determine their own work plan.
- b. Integration – the extent to which an individual forms a component part of the department or unit's operations and organization. This test is often considered to be a secondary test to the control test.
- c. Economic Reality – involves examining the test of control, ownership of tools, and chance of profits and risk of loss.
- d. Specified Results – the overall nature of the engagement that the independent contractor has been hired to perform.

The attached checklist addresses these four standard tests. It is extremely important that the understanding of both the service provider and the University be documented in writing to show that there is a common agreement regarding the nature of the relationship.

2. UNIVERSITY OF ALBERTA CRITERIA

- a. Generally, contracts for services cannot be issued for work that would normally be covered by a collective agreement. This is especially true if the contractor is hired to fulfill the duties associated with a recognized position at the University of Alberta. There may be circumstances when a contract for services would be acceptable; the four standard CRA tests and the checklist need to be applied to each case and the appropriate judgment made based on the findings.
- b. Individuals engaging in course instruction will normally be considered to have an employment relationship with the University of Alberta. The only exception to this will be when the University engages in a contract for the provision of a course with a sole proprietorship, **partnership** or incorporated entity. In these exceptions, the University will not stipulate who will perform the statement of work but will leave that to the discretion of the external legal entity. Remuneration will be paid to the legal entity rather than the individual.
- c. As a rule, employees of the University of Alberta who work outside of their home department/unit for another department/unit or work additional hours for the same or another department (regardless of whether the work is consistent with their normal duties) will be considered to have an employment relationship with the University and will be paid (with all required deductions) through the payroll system.
- d. Even if individuals are completing identical assignments, the facts and circumstances behind the assignments may differ enough that the worker's status may be different in each case.

If a department or unit cannot provide sufficient evidence to support a contract for services, the individual will be considered an employee of the University. If after determining an employment relationship exists, a disagreement arises between the University and the individual, the individual can request an official ruling from CRA. If the individual can provide evidence of a ruling from CRA showing that the classification is incorrect, the contract and payment will be corrected.

Any penalties that may result from the failure to categorize a worker's status correctly will be charged to the department or unit.

3. CONTRACTING AND PAYMENT PROCESS

- a. Contracts and payments to individuals for employment relationships are processed, with all required deductions, through the payroll system in Shared Services.

Further information regarding employment procedures can be found on the University's Human Resources, Health, Safety and Environment website.

- b. Contracts for services and related payments are managed through Procurement and Contract Management.

Further information regarding contracting for services can be found at in the *Contracting for Services Procedure*.

DEFINITIONS

Any definitions listed in the following table apply to this document only with no implied or intended institution-wide use. [[▲Top](#)]

Contract for Services	A contract for services is an agreement by which a Contractor undertakes
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	to carry out physical or intellectual work or provide a service to the University for a stipulated fee. The Contractor is free to choose the means of performing the work and no relationship of subordination exists between the Contractor and the University in respect of such performance.
Corporation	A legal entity incorporated within the laws of federal or provincial jurisdiction. A corporation can be either a private corporation (owned by one or more individuals) or a public corporation (issues company shares to the general public). A corporation is usually identified by an operating name followed by the words "Ltd., Inc. Corp or Corporation".
Sole Proprietorship	A 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.
Partnership	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 profits or losses in the business. The operation of a partnership is similar to that of a sole proprietor.

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