

Issues on Independent Contractor Determination

Reviewed: December 27, 2011

Determining whether an individual is an employee or an independent contractor has many repercussions for the University.

The Internal Revenue Service (IRS) is very much aware of the tendency for entities to misclassify workers and fail to pay substantial amounts of employment taxes. Self-employed individuals are not covered by FICA, Medicare, or FUTA through the University nor included in various fringe benefit programs and retirement plans, thus, payroll costs are avoided significantly.

The IRS has focused a great deal of scrutiny and given high priority to the correct classification of employment relationships and tax implications of the decisions made. The penalties for misclassification can include underwithheld taxes such as federal income tax, social security, and Medicare taxes on both employer's and employee's share, state industrial insurance, and unemployment taxes. In addition, the penalty for misclassification is 100% of the taxes that should have been withheld. Whether erroneous or intentional, misclassification of workers also may subject the employer to penalties for failure to pay taxes due, failure to deposit, and additional interest on those amounts.

Issues for the University:

- IRS Requirements - The IRS requires the University to provide clear and convincing evidence supporting a decision to treat an individual as an independent contractor. See Form SS-8 ([PDF](#)).
- Verification of taxpayer identification number - The University is required to obtain Form W-9, Request for Taxpayer Identification Number and Certification, to confirm correct tax identification numbers and obtain appropriate certifications.

- Verification of foreign status - The University is required to obtain Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, from all nonresident alien individuals.
- Nonresident alien contractors - In order to comply with complex immigration and taxation laws, the University must provide adequate documentation prior to issuing payments to nonresident independent contractors/service providers. More information on nonresident alien contractors is located at <http://www.unr.edu/ypaf/controller/nrat/ind-cont.html>.
- The University prohibits current or former (during the past twenty-four-month period) employees of the Nevada System of Higher Education (NSHE) to be hired as independent contractors. NSHE includes College of Southern Nevada, Desert Research Institute, Great Basin College, Nevada State College at Henderson, Truckee Meadows Community College, UNLV, UNR, Western Nevada Community College, and NSHE System Administration Offices.
- Under the Board of Regents Conflict of Interest Policy, payments are not allowed to individuals related to NSHE employees. See BOR Title 4, Chapter 10 ([WEB](#)).
- In response to concerns for the IRS, state regulations, Board of Regents policy, and other legal requirements, NSHE developed a system-wide policy.