

## **Determining Pay Status—Employee or Contractor**

**NOTE:** The website URL for **Workday reference guides** that are referenced in this section is:  
<https://confluence.esg.wsu.edu/display/WKB/Workday>

### **EMPLOYEE OR CONTRACTOR**

Administrators use the following guidelines when considering whether a service should be provided by an employee or an independent contractor.

### **Coordinating Offices**

Employees

Human Resource Services (HRS) coordinates employment activities.

Independent Contractors

WSU's Division of Purchasing coordinates activities related to independent contractors.

Both Employees and Independent Contractors

Payroll Services helps in determining proper pay status, as well as the appropriate taxation method for all types of payments.

### **Types of Payee Relationships**

The choice of payee relationship is based upon the right to control the method of work.

Employee

An employee is under the direction and control of the employer. The employer not only controls what is done, but also the method by which it is done.

The employer has the right to discharge or terminate an employee.

See [Determining Payee Status](#) for other factors used to determine if an employee/employer relationship exists.

Independent Contractor

An independent contractor:

- Controls the means and methods of activities.
- Realizes profit or loss from services.
- Works for more than one firm at a time.
- Makes services available to the general public.
- Has a significant investment in tools and materials.
- Furnishes tools and materials for job.

## **Determining Pay Status—Employee or Contractor**

### **Determining Payee Status**

Several factors are used to determine payee status. Among these factors are two relationship tests, the common law test and the ABC test, which focus on the employer's right to control. See the U.S. Dept. of Labor Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA) website at:

[dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship](http://dol.gov/agencies/whd/fact-sheets/13-flsa-employment-relationship)

For additional information on this topic, see the Payment Decision Tree webpages on the Payroll Services website at:

[payroll.wsu.edu/payment-decision-tree/](http://payroll.wsu.edu/payment-decision-tree/)

### The Common Law Test

According to the Common Law Test, an employer/employee relationship exists when the worker is subject to the employer's will and control concerning what needs to be done and how it should be done. The employer must have sufficient control of, or the right to control, the work being done in order to establish an employee/employer relationship. (Sec. 530, 1986 Tax Reform Act)

### *IRS Factors*

According to the Internal Revenue Service (IRS), three categories of facts are considered when determining payee status:

- Behavioral control
- Financial control
- Type of relationship between the parties involved

*(Employer's Supplemental Tax Guide, IRS Publication 15-A)*

To view IRS Publication 15-A, go to the IRS website at:

[irs.gov/](http://irs.gov/)

### *Behavioral Control Facts*

Behavioral control facts show whether or not the business has the right to direct and control how the worker performs the tasks. These facts include the type and degree of the following:

- Instructions the business gives the worker.

Generally, an employee is subject to the business' instructions about when, where, and how to work. The key consideration is whether the business has retained the legal right to control both the results and the method of the work or services.

## **Determining Pay Status—Employee or Contractor**

### *Behavioral Control Facts (cont.)*

- Training the business gives the worker.

An employee may be trained to perform tasks in a certain manner. An independent contractor usually uses their own methods.

### *Financial Control Facts*

Financial control facts show whether or not the business has a right to control the business aspects of the worker's job. These facts include:

- Extent to which the worker has unreimbursed business expenses.
- Extent of the worker's investment.
- Extent to which the worker makes services available to the relevant market.
- How the business pays the worker.
- Extent to which the worker can realize a profit or loss.

### *Type of Relationship Facts*

Facts that show the type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether or not the business provides the worker with employee-type benefits, such as insurance, pension plan, vacation pay, or sick pay.
- Permanency of the relationship.
- Extent to which services performed by the worker are a key aspect of the regular business of the organization.

It is more likely the business will have the right to direct and control the worker's activities if the worker provides services that are a key aspect of regular business activity.

### The ABC Test

The ABC Test states that a paid service is employment, unless:

- Worker is free from control or direction in the performance of their service.
- Service is outside the usual course of business and outside the usual place of business.

## **Determining Pay Status—Employee or Contractor**

The ABC Test (cont.)

- Worker is customarily engaged in an independently established trade, occupation, profession, or business.

(Bureau of National Affairs *Payroll Administration Guide* 101-1651)

## **EMPLOYMENT PROCEDURES**

WSU employment includes the following positions:

- Faculty
- Administrative professional
- Graduate assistant
- Civil service
- Positions covered by collective bargaining unit agreements
- Temporary employment

### **Faculty**

For a faculty position, refer to:

- The Workday Create and Close a Position reference guide to establish a faculty position.
- *BPPM* 60.11 and the Workday Create, Edit, and Close Job Requisition reference guide to fill a faculty position.

### **Administrative Professional**

For an administrative professional (AP) position, refer to:

- The Workday Create and Close a Position reference guide to establish an AP position.
- *BPPM* 60.17 and the Workday Create, Edit, and Close Job Requisition reference guide to fill an AP position.

HRS reviews the duties of these positions (see *BPPM* 60.02).

### **Graduate Assistants**

For a graduate assistant position, refer to:

- The Workday Create and Close a Position reference guide to establish an assistant position.
- Graduate Appointment Processing memorandum to fill a graduate assistant position.

### **Civil Service / Collective Bargaining Unit**

For a civil service position or a position covered by a collective bargaining unit agreement, refer to:

- The Workday Create and Close a Position reference guide to establish a civil service or collective bargaining unit position.

**Determining Pay Status—Employee or Contractor**

**Civil Service / Collective Bargaining Unit (cont.)**

- *BPPM* 60.02 to determine the classification of a civil service or collective bargaining unit position.
- *BPPM* 60.18 and the Workday Create, Edit, and Close Job Requisition reference guide to fill a civil service or collective bargaining unit position.

**Temporary Employment**

See *BPPM* 60.26 and 60.27 for procedures related to temporary and student employment.

**INDEPENDENT CONTRACTOR PROCEDURES**

See *BPPM* 70.50.