

Nova Southeastern University
Worker Classification Checklist
Independent Contractor vs. Employee Determination

This Checklist must be completed **prior** to engaging the services of an Independent Contractor in order to determine whether the individual, in fact, qualifies for independent contractor status. The form should be completed by the department responsible for engaging the worker, and in particular, by the person knowledgeable of the services that will be performed. It is important that you read the instructions that begin on page three in order to properly complete this form. (The terms NSU or University in the questions below also means the hiring department).

I. General Information		
1. Payee's Name		
2. Worker's Name (if different than Payee)		
3. Date(s) of Service		
4. Hiring Department		
II. Payee Classification for Tax Purposes		
Place an "X next to the appropriate classification	PAYEE's CLASSIFICATION (see instructions on page 4 for definitions)	Forms to Complete
	Payee (in line I.1 above) is a Corporation, Partnership or LLC that reports business income on IRS Form 1120, 1120-S or 1065 or payee is a U.S. Governmental Entity.	a. Complete IRS FORM W-9 . b. Do <u>not</u> complete this checklist.
	Payee (in line I.1 above) is an Individual, a Sole Proprietorship or a Single Member LLC who reports business income on IRS form 1040 or payee is a non-resident alien	Proceed to Section III of checklist. The payee is synonymous to "individual," "person" or "worker" in the remainder of the checklist.
III. Relationship with the University		
1. Is the individual the primary provider of instructional/teaching/workshop services needed to conduct classes or courses offered by NSU, NSU Continuing Education or a NSU department or unit (even if taught for one day)? "No" is an appropriate response if the individual is not the primary instructor and is being paid an honorarium as a guest speaker or to present a brief lecture in a classroom or at a conference sponsored/conducted by NSU.	Yes	No
2. Is the individual performing services that are a key aspect of regular business performed by the hiring NSU unit or department? <i>Examples of this include a computer person for Information Technologies, an accountant for University Controllers' Office, an aerobics instructor for Campus Recreation, an attorney for Office of General Counsel, any department providing training to students (whether enrolled or not enrolled) as they are engaging in a business that is a key aspect of NSU's educational business.</i>	Yes	No
3. Is the individual a current employee or has the individual worked as an employee of the University at any time during the last 12 months conducting similar activities?	Yes	No
4. Will the university be evaluating the individual's performance for potentially hiring the worker as an employee immediately following termination of independent contractor engagement?	Yes	No
5. Does/did NSU pay other employees to perform essentially the same or similar work in the same department as the one engaging the worker's services?	Yes	No
6. Will the worker supervise any NSU employees or other independent contractors paid by NSU?	Yes	No
If "Yes" to any of the questions above, "STOP," the worker is an employee. It is not necessary to complete the remainder of this form. Contact your department's HR Contact to hire worker as a temporary employee. If "No" to <u>all</u> of the above questions, proceed to section IV		
IV. Behavior Control		
1. Will the University be supervising, directing or providing instructions as to the means and methods the worker uses to perform the services?	Yes	No
2. Even if no instructions are given, will NSU retain the right to control, supervise, or direct the means and methods used by the worker to achieve the results of his/her services?	Yes	No
If "Yes" to any of the questions above, "STOP," the worker is an employee. It is not necessary to complete the remainder of this form. Contact your department's HR contact to hire worker as a temporary employee. If "No" to all of the above questions, proceed to Section V.		

V. Financial Control		
1. Method of Payment: Will the worker's compensation be a flat fee for services performed (as opposed to compensation based on number of hours worked)?	Yes	No
2. Unreimbursed Business Expenses: Is the individual responsible for business expenses (e.g., travel, supplies, computer, workspace, etc.) he/she incurs in the performance of his/her services to NSU?	Yes	No
2a. If no, indicate the expenses that will be reimbursed, and any NSU space, tools and/or equipment that will be provided for the engagement.		
3. Services Available to Market: Is the individual engaged in an established trade, occupation, profession or business that makes the same services available to other clients and/or businesses outside the University?	Yes	No
3a. if yes, please provide proof of business as attachment to checklist (e.g., business cards, brochures, webpage or client list). Note below the documents attached to this checklist and the worker's website. If no attachments, then provide in the space below, an explanation for your "yes" response.		
4. Insurance: Does the individual carry worker's compensation insurance or professional liability insurance?	Yes	No
Continue to Section VI		
VI. Relationship Between Parties		
1. Written Contract: Does the University and the individual intend this working relationship to be that of an "independent contractor" and document such intent by signing NSU's Independent Contractor Agreement?	Yes	No
2. Permanency of Relationship: Will the worker be hired for a specified period or project vs. an expectation that the relationship will continue for an indefinite period of time)?	Yes	No
If "No" to any of the questions in Section V or VI, the worker may be an employee; Consult with your department's HR Contact. If answers are "Yes" to <u>all</u> questions in section V and VI, then the worker qualifies for independent contractor status. Complete Part VII below.		
VII. Attach 1) Copy of Independent Contractor Agreement BEFORE signatures are obtained and 2) Detailed description of services Proceed to Section VIII below		
VIII. Certification and approval for Independent Contractor Determination of Worker		

1. **Preparer's signature and certification** I certify that the information provided on this checklist is complete and accurate to the best of my knowledge. I further certify that I have read NSU's Worker classification policy and procedures document prior to completing/approving this form.

Preparer's signature

Date

Preparer's Department

Print Name

Preparer's phone number

2. **HR Contact signature and certification** (See instructions on page four to determine if HR Contact signature is required):
I have reviewed this checklist and terms of the independent contractor agreement and concur with the Independent Contractor determination.

HR contact's Signature

Date

HR Contact's Department

Print Name

HR Contact's Phone Number

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Instructions

The following provides instructions and guidance to assist in accurately completing the NSU Worker Classification Checklist **PRIOR** to engaging the worker. The department engaging the worker is responsible for making the initial assessment and completing this form in conjunction with the worker being hired.

Sections II through V include criteria used in determining worker status as an independent contractor or an employee based on the classification factors published by the Internal Revenue Service (IRS). For these sections, it is important to start with section I and follow the order of the checklist as it may not be necessary to complete every section of the form depending on your responses.

Do not answer the questions with the end result in mind. Each question and answer should be considered thoughtfully and realistically. The IRS presumes each worker to be an employee unless certain facts and circumstances exist to meet Independent Contractor status. In the event that the IRS questions the independent contractor status granted an individual, the information on this form and your responses will be used to substantiate the University's position. Therefore, it is required that the completed and signed checklist be attached to all independent contractor agreements. If the IRS or other federal agency or a state agency later determines that the independent contractor is an employee, the hiring department will be charged the resulting back payroll taxes, penalties, interest and the cost of an external party consulted to represent NSU in the matter.

Section I. General- Complete lines 1 through 4. Then proceed to Section II

Section II. Payee Classification for Tax Purposes – you will need to ask the worker for the response to this question

- a) **Governmental Entity** – The United States or any of its agencies or instrumentalities. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions.
- b) **Corporation** – Reports business income on either IRS Form 1120 or 1120-S.
- c) **Partnership** – Reports business income on IRS Form 1065.
- d) **LLC (ELECTED CORPORATE TAX STATUS)** - Reports business income on either IRS Form 1120 or 1120-S.
- e) **LLC (ELECTED PARTNERSHIP TAX STATUS)** - Reports business income on IRS Form 1065.
- f) **Individual** – Reports business income on his or her individual IRS Form 1040 (may use Schedule C).
- g) **Sole Proprietor** – Unincorporated business; owner reports business income on his/ her individual IRS Form 1040 (may use Schedule C).
- h) **LLC – SINGLE MEMBER DISREGARDED FOR TAX PURPOSES** – Reports business income on his or her individual IRS Form 1040 (may use Schedule C).

Section III. Relationship with the University – Complete questions 1 through 6. If “Yes” to any of the questions 1 through 6 in this section, the worker should be classified as an employee and paid through NSU’s payroll system. Do not complete the remainder of this form. Contact your HR Contact and follow the normal hiring procedures. If all answers are “No” for all 6 questions, proceed to the next section.

Section IV. Behavioral Control

Behavioral control refers to the facts that substantiates whether there is a right to direct or control the details and means by which the worker will perform the services. The type and degree of instructions given to the worker are important in this context

1. An individual who must comply with another person’s instructions about when, where, or how to work is generally considered an employee. Types of instruction characteristic of an employer-employee relationship include the right to direct when to do the work, where to work, what tools or equipment to use, where to purchase supplies or services, what work must be performed by a specified individual (including the ability to hire assistants); what procedures/ processes must be used, or the requirement to obtain approval before taking certain actions. (However, information about the university’s policies or services or applicable government statutes or regulations is not considered instruction for worker classification determination).

Independent contractors ordinarily use their own methods to perform the work. The worker will receive no training, supervision, or instruction from the department engaging the worker other than conveying the scope of the work. The individual is free from the University’s control or direction in the performance of the services. The University controls only the outcome while the individual will be responsible for determining the means and methods used to achieve the outcome.

2. The amount of instruction needed varies among different jobs. Some tasks may require little or no instruction. Even if no instructions are given, sufficient behavioral control exists if the University has the right to control **how** the work results are achieved.

Section V. Financial Control

Financial control refers to facts that show whether or not the University has the right to control the economic aspects of the worker's job. The financial control factors include the following:

1. **Method of payment:** An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time worked. An independent contractor is usually paid a flat fee for the job, regardless if the payment of the flat fee is paid in more than one increment
2. **Unreimbursed Business Expenses:** The extent to which a worker chooses to incur expenses and bear their costs affects the worker's opportunity for profit or loss. This constitutes evidence that the worker has the right to direct and control the financial aspects of his/her business operations. Although not every independent contractor need make a significant investment, almost every independent contractor will incur an array of business expenses. Examples of such business expenses include:

-rent and utilities	- licensing/certification/ professional dues	-postage and delivery
-tools and equipment	- Wages or salaries of assistants	-repairs and maintenance
-training	-payments to business managers and agents	-supplies
-advertising	-leasing of equipment	-travel
-inventory/cost of goods sold		-depreciation

3. **Services Available to Market:** An independent contractor is generally free to seek out business opportunities, and the independent contractor's prosperity typically depends on doing so successfully.

Use line 3a to attach evidence of any marketing advertisement, website address or business cards. Even though not required to complete 3a in order to respond "yes," to question 3, such information will help strengthen the determination for independent contractor classification.

4. **Insurance:** That the worker carries his or her own worker's compensation and /or professional liability insurance is strong supporting evidence for an established business.

Section VI. Relationship between Parties (i.e., NSU and the worker)

This section describes other facts that court decisions consider relevant in determining worker status. Most of these facts reflect how the worker and the business perceive their relationship to each other. The relationship of the parties is important because it reflects the parties' **intent** concerning control.

1. **Written Contract:** Courts often look at the **Intent** of the parties. This is most often embodied in their contractual relationship. Thus, a written agreement describing the worker as an independent contractor is viewed as evidence of the parties' intent that a worker is an independent contractor.
2. **Permanency of Relationship:** If a business engages a worker with expectation that the relationship will continue indefinitely, rather than for a specific project period, this is generally considered evidence of the parties' intent to create an employment relationship. However, this should not be confused with a long-term contract, or one that may be renewed regularly with an independent contractor due to superior service, competitive costs, special expertise or lack of alternative service providers

Section VIII. Certification and Approval

If the worker is determined to be an employee, no checklist or signature is required. Otherwise, read below for required signatures.

1. **Preparer's signature:** The preparer is required to sign the checklist **ONLY** for determinations that result in independent contractor status based on the checklist responses. Read the instruction for HR contract signature below to determine if HR Contact review and signature are required.
2. **HR Contact signature:** For checklists in which a "No" response was entered for any question in Sections V and VI, your department's HR contact is required to review and sign the checklist in addition to the preparer. The HR Contact's signature signifies agreement of the worker's independent Contractor determination. If all the responses in Sections III and IV are "No" and all the responses in section V and VI are "Yes," then HR contact review and signature are not required in order to proceed with the Independent Contractor hiring procedures.

For Independent contractor determinations, the individual will be paid through the Accounts Payable system. A completed and properly approved Checklist form must be submitted along with the other documents required by Account Payable (e.g., W-9) to set up the worker for payment in the Accounts Payable System. Refer to the NSU Accounts payable website for other required documents for vendor payments.

Conflicting Classification Results

If the preparer and HR contact disagree or are uncertain about the worker's classification based upon the facts given in the checklist or if technical assistance is needed in completing the checklist, please contact the NSU tax Department via NSUTAX@nova.edu.