

Independent Contractor or Employee

GENERAL GUIDELINES

This statement provides explanation and clarification of independent contract labor considerations and provides guidelines for distinguishing between employees and independent contractors.

Generally, Gettysburg College does not classify former employees as independent contractors until the one year anniversary of his/her termination date. These former employees are typically classified as temporary employees and are paid via payroll. After the one year anniversary, the assessment forms described in this document are to be completed to determine if the classification of the relationship should be changed to that of an independent contractor. Exceptions may exist for individuals who will be engaged in services otherwise not provided by a current college position or for individuals performing services in a state other than Pennsylvania. If these exceptions may apply, please contact the Assistant Controller for assistance.

DEFINING AN INDEPENDENT CONTRACTOR

For purposes of unemployment insurance law, anyone who provides services for Gettysburg College is presumed to be an employee until it is determined that the person is an independent contractor and that the College has no right to exercise direction or control over the work performed.

For Fair Labor Standards Act purposes, the courts have established that an independent contractor is anyone who passes the "economic reality test". This test states that the focal point in deciding whether an individual is an employee or contractor is whether the individual is economically dependent on the business to which he/she renders service or is, as a matter of economic fact, in business for him/herself. In applying this test, the courts generally focus on five (5) factors:

- a. the degree of control exerted by the alleged employer over the worker;
- b. the worker's opportunity for profit or loss;
- c. the worker's investment in the business;
- d. the permanence of the working relationship;
- e. the degree of skill required to perform the work.

In addition to the factors stated above, the Department of Labor (DOL) evaluates the following factors to determine whether an individual is truly an independent contractor:

- a. the extent to which services rendered are an integral part of the employer's business;
- b. the permanency of the relationship (this is a repetition of "d" in previous section);
- c. the amount of individual investment in facilities and equipment;
- d. the opportunities for profit and loss (this is a repetition of "b" in previous section);
- e. the degree of initiative, judgment, or foresight exercised by the individual who performs the services.

LEGAL CONSIDERATIONS

The Department of Labor (DOL) and the courts have the authority to determine whether individuals are employees or independent contractors in disputes over the applicability of the overtime provisions of the Fair Labor Standards Act and to grant back pay as required.

PROCEDURES FOR DETERMINING CONTRACT LABOR STATUS

Simply calling a relationship "contract labor" does not make it so. All aspects of the actual working relationship must be evaluated to determine if Gettysburg College has the right to exercise direction and control.

To assist in assessing each situation, departments/managers/directors should use the following attachments. Please contact the Assistant Controller for additional assistance.

- Assessment Form #1 is a quick test to determine an independent contractor relationship. Affirmative answers on this Assessment Form indicate that an independent contractor situation exists.
- Assessment Form #2 is a more comprehensive checklist. Affirmative answers to these questions would point to an employee, not an independent contractor situation.

Independent Contractor or Employee - Assessment Form #1

Note: Affirmative answers to all or most of these questions indicates that an Independent Contractor situation exists.

	Yes	No
1. Does this person work off of the College premises most of the time?	_____	_____
2. Does this person provide his/her own materials and/or equipment?	_____	_____
3. Can this person negotiate his/her own price?	_____	_____
4. Is this person paid by the job?	_____	_____
5. Does this person stand to lose money if the work is not properly performed? In other words, does this person have to redo the work for no additional compensation?	_____	_____
6. Does this person set his/her own schedule?	_____	_____
7. Does this person advertise his/her services independently?	_____	_____
8. Is this person free to work for other entities doing similar services?	_____	_____
9. Does this person work for other entities doing similar services?	_____	_____
10. Can this person hire other individuals to perform the work or assist him/her in performing the work?	_____	_____
11. Is this person free from supervision by the College in the performance of the work?	_____	_____
12. Is the service this person performs fairly unrelated to the primary service the College provides?	_____	_____
13. Is this a temporary and short term contract which does not expect to be renewed in the next fiscal year?	_____	_____

Independent Contractor or Employee - Assessment Form #2

Note: Affirmative answers to all or most of these questions indicates that an Employee situation exists.

	Yes	No
1. Does your operation depend on this person?	_____	_____
2. Will you require attendance at training sessions?	_____	_____
3. Do you intend to instruct this individual on how, where, and when the work is performed?	_____	_____
4. Must this person do the work personally?	_____	_____
5. Is the work routine?	_____	_____
6. Is the work exactly like (or similar to) tasks assigned to other employees?	_____	_____
7. Does the work require knowledge or skills already in use among present employees?	_____	_____
8. Does this person work for you on a continuing or possible part-time basis?	_____	_____
9. Does this person work during fixed hours that you establish?	_____	_____
10. Does this person work full-time for your organization?	_____	_____
11. Do you supply equipment and materials?	_____	_____
12. Are the facilities where the work is performed owned, leased, or rented by the College?	_____	_____
13. Is this individual expected to participate in College functions, meetings, or outings?	_____	_____
14. Do you pay this person regular amounts at specified intervals?	_____	_____
15. Do you require the individual to follow the same procedure as employees when purchasing business items and services, including travel?	_____	_____
16. Does this person participate in company benefits, eg. insurance, vacation time, etc?	_____	_____
17. Can this person be dismissed at the College's discretion?	_____	_____
18. Can this person quit at his/her discretion?	_____	_____

- 19. Does this person have access to the College's grievance procedures? _____
- 20. Is this person constrained against making a profit in anyway or protected against financial loss? _____
- 21. Is this person expected to refuse work from other employers? _____
- 22. Do you have an understanding that the individual will not produce or sell products or services to firms or the general public? _____
- 23. Is this person prohibited from hiring, supervising, and paying assistants at his own expense to assist in completing the work? _____
- 24. Is the contractor currently employed by Gettysburg College and receiving payments through the payroll system? _____