



Policy: Independent Contractor Policy

Submitted By : Kirk Simmet and John Durham

Financial Affairs Department
Payroll and Procurement Policies and Procedures

Approved: 4/13/2006

Determining Employer and Employee Relationship

The IRS has been very aggressive in looking at how universities classify their workers. The penalties for incorrectly classifying employees as independent contractors are significant. If a worker paid as independent contractor is reclassified by the IRS as an employee, the University will be liable for the amount of the federal income taxes it failed to withhold, together with both the employer's and employee's share of FICA taxes associated with that employee's compensation.

In addition, Villanova University is responsible for the withholding and timely remittance of appropriate income taxes from wages paid to our employees. These wages and taxes paid to employees are reported on Form W-2; amounts paid to independent contractors are reported on Form 1099.

Villanova University utilizes the Common Law Test in determining worker classification. This method basically consists of analyzing the level of control we, as the employer, exert over the worker. The more control we possess (especially over the means of accomplishing a task rather than the end result), the more likely a worker is an employee. Control, in this instance, is defined as the level of legal right to direct rather than the level of direction actually provided.

It should be noted that the IRS tends to view an individual performing teaching functions for a University as an employee of that University for tax purposes regardless of the duration.

A current employee of the University will not be considered an independent contractor.

Policy

Prior to engaging the services of any individual as an independent contractor, the hiring department must complete an Independent Contractor Classification Checklist to determine the proper work status of the individual - either as an employee of the University or an independent contractor.

Definitions

Employee - an individual in an employment situation in which the employer has the right to control and direct the individual with regard to the result to be accomplished and the process by which the result is accomplished. **Since the main focus of Villanova University is higher education, any individual performing a teaching function must be treated as an employee.**

Independent contractors - individuals who render a service and meet contractor conditions established by the IRS. They typically have a separate workplace, are not supervised, and have a particular set of skills not available elsewhere within the organization. They are not entitled to employee benefits, are not covered by workers' compensation, and their pay is usually not subject to income tax withholding.

Consultants - independent contractors who more specifically provide professional advice. They usually have a separate skill or expertise not available within the University, and the need for their services commonly does not extend beyond a limited period of time in which to complete a specifically defined project. **Individuals who are currently employed by the University who may be asked to serve as consultants for other University departments must be paid through Payroll with all appropriate taxes withheld.**

Classification Factors

A worker is an employee, not an independent contractor, if an employer/employee relationship exists. Such a relationship exists if the University has the right to DIRECT AND CONTROL the worker, both as to the final results and the details of when, where, and how the work is to be done.

Procedure

Prior to engaging the services of any individual as an independent contractor, the hiring department must complete an Independent Contractor Classification Checklist to determine the proper work status of the individual. Departments are responsible for making an initial assessment of the employment status of individuals they hire based on the results of the checklist; departments are encouraged to contact the Payroll Office with specific questions prior to finalizing arrangements with the individual. Upon completion of the classification checklist, if a majority of your answers are in shaded section, your request should be treated as an employee.

If the individual is considered to be an employee, the hiring supervisor will follow the regular hiring procedures to place the individual on the University's payroll. Human Resources or Academic Affairs will facilitate that action.

If the individual is considered to be an independent contractor, the hiring department will submit a requisition to the Procurement Department along with a completed Villanova Consulting Agreement*, classification checklist and any other supporting documentation. All new vendors must complete a vendor profile and W-9 form which must be submitted with request. Contracts in excess of \$5,000. must be competitively bid or a sole source justification form must be completed. This independent contractor will receive a purchase order from Villanova University and all invoices will be processed against this order number.

*Other independent contractor agreements will be accepted once approved by our General Counsel's Office.

Guidelines to Consider When an Independent Contractor Relationship Exists.

The hiring of an independent contractor or consultant should be based upon a selection process which attempts to secure the most qualified individual for the assignment. Compensation should be appropriate for the type of advice or service provided and should reflect the skills and qualifications of the individual selected to perform the service.

1. Do not establish a work schedule.
2. Do not provide office space or training.
3. Do not furnish tools and materials.
4. Do not require the independent contractor to provide regular verbal or written reports.
5. Payment for the assignment should be based generally on one fee for performing the service rather than by the hours spent on that assignment.
6. The independent contractor may need to provide proof of liability coverage.
7. Incidentals such as travel, meals and materials should be included in the fee, or should be stated, for example, "as not to exceed ten percent of the fee." Any other arrangements for reimbursement of travel or other expenses must be reviewed in advance with the Procurement Department and should be specified in the agreement as well; otherwise the Institute will not be liable for travel expenses.
8. Do not include an independent contractor's name in the Villanova telephone directory or request the issuance of a regular parking permit.
9. Be mindful that independent contractors who earn more than \$10,000 a year from a single employer and who do not perform services for any other employer are likely to be considered employees by the Internal Revenue Service.

More information regarding the classification of independent contractor vs employee can be found at the following IRS websites:

[IRS Guidelines](#)

[Tax Guide](#)

Questions regarding the University's policy should be directed to the Office of Payroll.

Links to other referenced materials:

[Villanova's Consulting Agreement](#)

[Vendor profile](#)

[W-9 Form](#)

CLASSIFICATION CHECKLIST
(Employee verse Independent Contractor)

Name of individual being considered: _____

Individual's SSN or EIN: _____

| | YES | NO |
|--|-----|----|
| Current Payroll Status: | | |
| Was the person being paid through Payroll during the current or previous calendar year? | | |
| If Yes, was it for similar work? | | |
| Behavior Control: | | |
| Does the employer have the right to control when, where, and how the work is done? | | |
| Do you set the work hours? | | |
| Is the person required to perform the work personally? | | |
| Is the work performed on Villanova University premises or using our facilities? | | |
| Is the worker required to follow your instructions in completing the job or task? | | |
| Is the worker allowed to delegate or assign the work to others and/or assistants not currently working for Villanova? | | |
| Financial Control: | | |
| Is the worker paid by the hour, biweekly, or monthly, rather than for the completion (or stage completion) of the project? | | |
| Are you required to pay the worker for time spent even if the job is not completed? | | |
| Do both parties have the right to terminate the relationship at will? | | |
| Is the worker doing business as a corporation or using a legitimate business name? | | |
| Does the employee have a federal employer identification number (not Soc. Sec. #)? If so, please list above. | | |
| Does the worker carry his/her own insurance? | | |
| Relationship: | | |
| Is Villanova University the individual's only client? | | |
| Is the work in question customarily performed by employees? | | |
| | | |

Answers in shaded section weigh in favor of treating person as an employee. Contact Payroll for assistance in determining employment status.

Please describe the work that is to be done and who will be doing it (be as detailed as possible):

Completed By: _____

Your Title: _____

Department and Phone _____

INDEPENDENT CONTRACTOR AGREEMENT
 Personal Services Short Form
 VILLANOVA UNIVERSITY
 800 LANCASTER AVENUE
 VILLANOVA PA 19085

This Agreement is entered into as of the ____ day of _____, 20____, between, Villanova University ("Villanova" or the "University") and

_____,

("Contractor").

1. Independent Contractor. Villanova engages Contractor as an independent contractor to perform the services set forth in this Agreement, and Contractor accepts such engagement. Contractor acknowledges that he/she is an independent contractor and not an employee of the University. As such, Contractor shall have no claim against Villanova for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment benefits or employee benefits of any kind. Contractor acknowledges that Villanova shall also have no obligation to pay any medical bills for any injuries sustained by Contractor in connection with the work performed for Villanova by Contractor; contractor represents that s/he has his/her own health insurance or other adequate financial arrangements to pay for such medical bills. Contractor shall not represent him/herself to any third party as being an employee of the University.
2. Duties, Term and Compensation. Contractor's duties, term of engagement, compensation, reimbursement of expenses and payment shall be as set forth in Exhibit A, incorporated herein. The University will pay Contractor monthly upon submission of an invoice including a description of the work and submission of a time summary. The University will not reimburse Contractor for time spent traveling to and from Villanova. The University will not withhold any taxes on amounts paid to Contractor, and all federal, state and local taxes will be Contractor's responsibility to pay. The University is a non-profit organization exempt from the payment of Pennsylvania sales and use taxes, and the University will not reimburse Contractor for any such taxes. Contractor is responsible for requesting and obtaining all required tax exemption numbers.
3. Compliance with Laws, Rules and Regulations. Contractor will comply with all security, safety and other applicable rules and regulations of the University and all applicable federal, state and local laws and regulations at all times that Contractor is working on behalf of Villanova.
4. Right to Terminate. The University shall have the right to immediately terminate this Agreement for any reason with or without cause. In the event of such termination, the University shall pay Contractor in accordance with this Agreement for work completed up to the termination, less any damages or other expenses incurred by the University and arising from Contractor's performance.
5. Inventions and Intellectual Property Rights. Contractor agrees that any copyrightable work (including set, lighting, costume or other theater designs; computer programs or software; documentation; discoveries; inventions or improvements ("Deliverables")), developed by Contractor solely, or with others, in connection with the performance of this Agreement shall be deemed a "Work Made for Hire." The parties agree that Villanova shall own such Deliverables and all intellectual property rights in and to the Deliverables, including patent and copyright rights and trade secrets, and Contractor irrevocably and unconditionally conveys, assigns and transfers to Villanova, without any additional consideration, all of his/her rights, title and interest in the Deliverables. Contractor agrees that it retains no rights whatsoever in the Deliverables. Contractor will provide the University with any assistance it may require to obtain patents or copyright registrations, including execution of any documents submitted by the University. To the extent that Contractor has intellectual property rights in technology contained in any of the Deliverables, Contractor grants Villanova a royalty free, paid-up, worldwide, non-exclusive license to use such technology in connection with the Deliverables.

6. Warranty for Intellectual Property. Contractor represents and warrants to the University that the Deliverables are original creations and do not infringe the property or intellectual property rights of any third parties, and that Contractor has obtained all consents, permits and approvals required to comply with all laws, rules and regulations applicable to Contractor's work under this Agreement.
7. Indemnification and Confidentiality. Contractor shall indemnify, defend and hold harmless the University, its affiliates and their respective trustees, agents, representatives and employees from any and all claims, costs, judgments, losses, liabilities, fines or penalties, including but not limited to attorneys fees, arising from workers' compensation claims of Contractor's employees, Contractor's negligence, wrongful acts, violations of laws or breach of this Agreement. Contractor waives any rights it may have to subrogation from or against Villanova. Contractor agrees that Villanova shall not be responsible for any physical damage occurring to property owned, leased or rented by Contractor.

Contractor agrees that any information of Villanova obtained by him/her while performing services hereunder shall remain confidential and shall not be disclosed to third parties without the prior consent of Villanova.

8. Insurance. Contractor, at its expense, agrees to maintain during the term of this Agreement the following insurance coverages in amounts of not less than:
- Workers' Compensation: Statutory
 - Comprehensive General Liability: \$1,000,000 each occurrence
 - Employer's Liability: \$100,000 each occurrence, \$500,000 annual aggregate
 - Automobile Liability: \$1,000,000 each accident

The University shall be named as an additional insured for all these coverages. Contractor must provide the University with a certificate evidencing this insurance coverage no later than the effective date of this Agreement. Contractor warrants and represents that each of its owners, employees and partners carry individual health insurance.

9. Governing Law, Non Waiver, Headings, Entire Agreement and Severability. In the event of a conflict between the body of this Agreement and Exhibit A, this Agreement shall govern. No amendment to any provision of this Agreement shall be effective unless in writing and signed by each party. This Agreement constitutes the entire understanding and Agreement between the parties and supersedes all prior written or oral agreements or understandings existing between the parties concerning the subject matter hereof. Sections 1, 5, 6 and 7 of this Agreement shall survive the expiration or termination of this Agreement. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, excluding choice or conflict of laws principles. Any legal action or proceeding with respect to this Agreement must be brought in the courts of the Commonwealth of Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. Contractor irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail to Contractor at the address set forth on Exhibit A. No waiver shall be valid unless in writing and signed by the parties. The terms of this Agreement are severable and if any term or provision is found by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions shall remain in force.

CONTRACTOR:

By: _____

Printed Name: _____

Date: _____

VILLANOVA UNIVERSITY:

By: _____

Authorized Representative

Printed Name: _____

Date: _____

Exhibit A
Personal Services Short Form

Contractor:

Name _____ Individual's SSN or EIN: _____

Address _____

Telephone _____ E-mail Address: _____

Term:

Commencing on _____, 20_____
and ending upon completion of Contractor's duties or earlier termination by Villanova. This agreement
may be extended by mutual written agreement.

Compensation:

Payment: The University will pay the independent contract the sum of \$ _____ in installments (or
lump sum) as follows (standard payment terms are Net 30):

Or

Payment Not to exceed: _____ at a rate of \$ _____.

Independent contractor ___ will have/ ___ will not have reimbursements of expenses paid by the University.
Reimbursement of expenses shall not exceed: _____.

Duties:

Contractor will perform the following duties:

___: Additional description attached is incorporated into this document by this reference.

CONTRACTOR:

VILLANOVA UNIVERSITY:

By: _____

By: _____

Printed Name: _____

Authorized Representative
Printed Name: _____

Date: _____

Date: _____