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| Policy: Independent Contractor | Policy Number: I-1.10 |
| Policy Owner(s): Human Resources | Original Date: 5/11/2017 |
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I. POLICY: John Carroll University (“the University”) has established criteria and guidelines, in accordance with federal regulations, to determine whether an individual is an Employee or an Independent Contractor of the University and to ensure the appropriate classification, compensation method, and tax treatment of those performing work for the University.

II. PURPOSE: To provide criteria for Independent Contractors and establish required procedures to correctly classify and compensate these individuals.

III. SCOPE: All John Carroll University Employees who have responsibility for hiring workers.

IV. DEFINITIONS:

Employee: an individual who works or is permitted to perform work for the University and whose work is directed and controlled by the University. An Employee is compensated through the University’s Payroll Office and paid wages that are reported on an IRS Form W-2.

Independent Contractor: an individual who provides services to the University as a contractor and is not an Employee of the University. An individual is determined to be an Independent Contractor if the University has limited control over the contractor’s methods of performing the work, and instead has the right to control or direct the result of the work. An Independent Contractor’s payments are reported via an IRS Form 1099.

V. GUIDELINES: To determine whether an individual is an Employee of the University or an Independent Contractor, hiring supervisor, in consultation with Human Resources, is expected to consider all the circumstances involved and evaluate the University’s anticipated control over the methods of performing the work, as opposed to the amount of control over the results of the work. There are three broad categories that the Internal Revenue Service has indicated should be considered in making this determination: 1) behavioral control, 2) financial control, and 3) the type of relationship between the individual and the University. The following are guidelines for determining a worker’s status:

A. **Behavioral Control**: Behavioral control is established when the University has the right to direct or control how the worker performs the specific work tasks. Examples of this include:

1. **Instructions**: Extensive instructions by the University on how work is to be done suggest that the individual is an Employee. Instructions from the University may include how, when, or where the work is done, for example:

- i. What tools or equipment to use;
- ii. Whether assistants are hired to help with the work; and/or
- iii. Where to purchase supplies and services.

2. **Training**: If the University provides training to an individual about required procedures and methods to perform the work, this suggests that the worker is an Employee.

B. **Financial Control**: Financial control is established where facts illustrate whether there is a right to direct or control how the business aspects of the worker's activities are conducted. Examples of this include:

1. **Significant Investment**: If the worker invested in the equipment and facilities used to complete the work, this can suggest the worker is an Independent Contractor.

2. **Expenses**: If the University pays or reimburses the worker for expenses related to the work, this suggests that the worker is an Employee.

3. **Opportunity for Profit or Loss**: If the worker can realize a profit or incur a loss from the work for the University and other entities, this suggests that the worker is an Independent Contractor.

4. **Method of Payment**: If the worker is generally guaranteed a regular wage amount on an hourly or weekly basis, or based on another period of time, this usually indicates that a worker is an Employee. If the worker is paid a flat fee for the job or project, this usually indicates that the worker is an Independent Contractor.

5. **Services available to the Market**: An Independent Contractor is generally free to seek out business opportunities. Independent Contractors often advertise, maintain a visible business location, and are available to work in the relevant market. If the individual works for another employer or offers services to the general public, this indicates that the worker could be an Independent Contractor. Because some employees work multiple jobs, this factor is not solely determinative of independent contractor status but is one factor to consider when the worker offers the services to others as part of an independent business.

C. **Relationship of Parties**: The relationship between the University and the worker is a relevant factor in the determination of whether the worker is an Employee or an Independent Contractor. For example:

1. Employee Benefits: If the individual receives employment benefits, such as University-paid insurance, retirement, or paid leave, this is an indication that the worker is an Employee. However, if the individual does not receive benefits, the worker could be either an Employee or an Independent Contractor depending on other factors.
2. Written Contracts: The existence of a written contract suggests the individual is an Independent Contractor. However, merely stating that a worker is an independent contractor in a contract is not sufficient to determine the worker's status.
3. Nature of the Work: If the worker provides services that are an integral part of the University's operations or business, this often indicates that the worker is an Employee.
4. Permanency of the Relationship: If there is an expectation that the working relationship will continue indefinitely, it indicates an employee status. If the working relationship is set for a specific time period or project, it indicates an independent contractor status.
5. In addition to the criteria referenced above, the Independent Contractor Guideline Table attached (Attachment A) is a tool that can help Human Resources and hiring supervisors make the necessary determinations as to the appropriate status of a worker.

VI. PROCEDURE:

- A. Before an individual's performance of work, hiring supervisors should determine whether the individual is an Employee or an Independent Contractor of the University based on a review of all circumstances related to the relationship of the worker and the University.
- B. If the individual worker is being considered for employment with the University, Human Resources will assist the department in coordinating the Staff Employment Process.
- C. The hiring supervisor or department is expected to discuss with Human Resources the determination of whether to classify an individual as an Independent Contractor or Employee. Human Resources must approve the determination as to the individual's status as an Employee or Independent Contractor.
- D. If the worker is an Independent Contractor, Human Resources will facilitate the execution of an Independent Contractor agreement by the University and the individual, specifying the work to be performed, the financial compensation, and the details of the arrangement.
- E. Amounts to be paid to an Independent Contractor generally should be reviewed and approved by the Purchasing Department consistent with the University's purchasing policies, or by Human Resources in accordance with this Policy and Human Resources practices.

VII. CROSS REFERENCES:

Compensation

Hiring

Hours Worked and Overtime

Independent Contractor Guidelines

John Carroll University Staff Employment Process

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