

Employee/Independent Contractor Classification Checklist



This form is intended to assist you in determining whether a service provider should be classified for federal, state and FICA tax purposes as an Employee of the University or as an Independent Contractor. Your responses to the questions below will support one of these classifications. Generally speaking, an employer must withhold income taxes, withhold and pay social security and Medicare taxes, and pay unemployment taxes on wages paid to an Employee, while an employer is not required to withhold or pay any taxes on payments to independent contractors. Please answer the following questions as accurately as possible.

INSTRUCTIONS:

Contracting for Independent Contractor services with the Bay Atlantic University may require completion of the following:

- Employee/Independent Contractor Classification Checklist (Required when potential Independent Contractor is an individual.)
- IRS Form W-9 (Required for payments made to all Independent Contractors.)

PROCEDURAL STEPS:

1. Read 5.82 Independent Contractor Policy.
2. When in consideration of an individual Independent Contractor, the department should then complete the [Employee/Independent Contractor Classification Checklist](#) which will lead to a determination of whether the individual service provider will be classified as an Independent Contractor or a University Employee. If the department is in doubt after completing the Checklist, they should contact [Payroll Office](#) for clarification.
3. If the [Employee/Independent Contractor Classification Checklist](#) leads you to the conclusion that this individual service provider should be classified as an Employee, the individual service provider should be retained by following the University's Regulations regarding hiring temporary or permanent Employees.
4. The department requesting the services of an Independent Contractor (individual or other legal entity) should complete an Adjunct/Independent Contractor Agreement (Contract), providing as much detail as possible. Much of the information will need to be provided by the proposed Independent Contractor.
5. Once both the Adjunct/Independent Contractor Agreement (Contract) and the [Employee/Independent Contractor Classification Checklist](#) are completed, two signed copies of the agreement should be sent to the Independent Contractor for their signature. One copy will be retained by the Payroll Office; one copy will be retained by the Independent Contractor.

CHECKLIST

I. General Information

- a. Is the service provider a Guest Lecturer or Performer (e.g. an individual who lectures or performs at only a few events)? ☐ Yes ☐ No

If Yes, then ignore this form and complete the Adjunct Faculty Agreement.

- b. Will this engagement last less than 1 month and result in a total payment less than \$1,000? ☐ Yes ☐ No

II. Relationship with the University

- a. Does this service provider currently work for the University as an Employee? ☐ Yes ☐ No
- b. Is it currently expected that the University hire this service provider as an Employee following the termination of his or her consulting service? ☐ Yes ☐ No
- c. During the past 12 months, did the service provider have an official University appointment (including temporary) and provide the same or similar services? ☐ Yes ☐ No
- d. Is the service provider regular, auxiliary, or adjunct faculty? ☐ Yes ☐ No
- e. Will the service provider receive or be entitled to benefits such as paid vacation days, paid sick days, health insurance, life or disability insurance, or a pension? ☐ Yes ☐ No

If the answer is "Yes" to **any** of the questions, proceed to Section IV, Classification, and classify the service provider as an **Employee**.

Service Provider Information

Name _____ Social Security Number _____

Department _____ Preparer's Name _____

III. Behavior Control

- a. Will a current University Employee, have the right to instruct the service provider about how to do the work? ☐ Yes ☐ No
- b. Will the University supply necessary tools, materials, and equipment? ☐ Yes ☐ No
- c. Will the University provide assistants? ☐ Yes ☐ No
- d. Is the effort and expertise of this specific service provider required? ☐ Yes ☐ No
- e. Is the order or sequence to follow specified in the pro forma contract? ☐ Yes ☐ No
- f. Will the service provider prepare regular verbal or written progress reports? ☐ Yes ☐ No
- g. Will the University provide periodic or on-going training for the service provider about procedures to be followed and methods to be used? ☐ Yes ☐ No

If the answer is "Yes" to **any** of the above questions in Section III, these responses indicate that the University has the right to direct and control how the service provider performs the work for which they were hired, and therefore suggest **Employee** classification.

IV. Financial Control

- a. Will the University reimburse the service provider for expenses that are not included in the agreement? ☐ Yes ☐ No
- b. Will the service provider use their own facility in which to perform their services? ☐ Yes ☐ No
- c. Does the service provider provide the same or similar services to other entities as part of a trade or business? ☐ Yes ☐ No

- d. Does the service provider make his or her services available to the general public? ☐ Yes ☐ No
- e. E. If the answer to "D" is "Yes", then do they have a business license? ☐ Yes ☐ No
- f. Is the service provider compensated for the work on an hourly, daily, weekly, or similar basis?
☐ Yes ☐ No
- g. Is the service provider free to make business decisions which affect the service provider's profit or loss?
☐ Yes ☐ No

Employee classification is indicated if "Yes" is answered to questions **a** or **f**. These responses show that the University has the right to control the business aspects of the service provider's job.

V. Relationship of the Parties

- a. Can the University withhold payment for unsatisfactory work? ☐ Yes ☐ No
- b. Can the worker terminate the services at any time without incurring a liability? ☐ Yes ☐ No

Employee classification is indicated if "No" is answered to **a**, or if "Yes" is answered to **b**.

Independent Contractor classification is indicated if "Yes" is answered to **a**, or if "No" is answered to **b**.

VI. Classification

Section III: Behavior Control

Number of Employee classification factors Number of Independent Contractor classification factors

Section IV: Financial Control

Number of Employee classification factors Number of Independent Contractor classification factors

Section V: Relationship of the Parties

Number of Employee classification factors Number of Independent Contractor classification factors

This Service Provider should be classified as as **Independent Contractor**

This Service Provider should be classified as an **Employee**

Key Notes

If the service provider is classified as an Employee, based upon the above considerations, the service provider should be retained by following the University's policies and procedures governing hiring temporary or permanent employees. If you do not agree with this classification, and have corroborating reasons why the service provider should be classified as an independent contractor, please explain in the space below:

VII. Certification

After evaluating the above checklist, in my judgment we should classify this service provider as an independent contractor.

If a determination is made that a person previously classified as an Independent Contractor should have been paid as an Employee – through Payroll, the department will be responsible for any employment taxes, penalties and interest, and appropriate administrative costs. Further, the department may be required to retroactively award certain benefits such as retirement contributions, workers compensation, or other Employee benefits consistent with payment as an Employee. Tax Services is the final arbiter of classification status.

If the service provider is classified as an Independent Contractor, complete the Adjunct Faculty Agreement (Contract), and submit the required documentation to the Payroll Office.

Preparer Name _____ Preparer Signature _____

Date _____

Principle Investigator (CFO)

I have reviewed this document and the responses herewith and agree with the above conclusion.

Name _____ Signature _____

Date _____