## Procedure 904: Independent Contractor

Category: Business Operations

Covered Individuals: All CEI Employees

##### Approved: 06/29/2020

**904.1 PROCEDURES**

Many College of Eastern Idaho (CEI) departments employ the services of individual(s) to perform varying services. These arrangements often raise questions about the status of the individual. Classification is critical to ensure the proper withholding of income, Social Security, Medicare, and unemployment taxes.

The classification of individuals as independent contractors or employees has important tax and non-tax consequences to both the Institution and the individual. It is generally more advantageous to federal and state governments to have an individual classified as an employee. When faced with a classification issue during the course of an employment tax audit, the Internal Revenue Service (IRS) will almost always treat individuals as employees, absent a reasonable basis for classification as an independent contractor on the part of the employer. Misclassification of an individual can be very expensive to the institution (or to persons in positions of responsibility), so it is essential that proper characterization of an individual be determined before any payments are made to an individual for services performed.

When a person performing services for CEI meets the criteria established by the IRS for status as an independent contractor, he/she shall not be subject to income tax withholding through the institution’s payroll. When a person performing services for the institution does not meet the criteria to be considered an independent contractor, he/she shall be treated as an employee, hired through the normal institutional process subject to all applicable policies and requirements, and subject to income tax withholding through CEI’s payroll.

To assist in determination of whether an individual is an employee under the common law rules, the IRS has released form SS8: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Withholding. This form has been released to help the IRS determine if an employer-employee relationship is present. The CEI version of this form is attached, for organizational use, to help departments determine status of workers. Per the IRS, the overarching issue in determining whether a worker is an employee or independent contractor remains the level of authority the employer retains to direct and control the worker’s activities.

**Risk of Misclassification of Independent Contractors**

Inaccurate classification of an employee or independent contractor creates a possible tax liability and retirement liability for CEI. Under audit, if the IRS determines that the payment should have been made as an employee and not as an independent contractor, CEI could be liable for the payment of all taxes and retirement payments that *should have* been withheld, plus interest and penalties.

**Instructions**

The primary responsibility for determining the classification of an individual as an employee or independent contractor rests with the department obtaining the services.

1. Please read the attached Common Law Factors to help in making the determination between an employee and an Independent Contractor.
2. Contact the business office for instructions if they are determined to be an independent contractor.
3. Contact Human Resources for instructions if they are determined to be an employee.

**904.2 Definitions**

1. Employee: An individual who performs services that are subject to the will and control of an employer – both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.
2. Independent Contractor: An individual or entity engaged to perform services and commonly referred to as a service provider, consultant, freelancer, contractor, etc. Independent Contractors are responsible for the means and methods for completing the task based on specifications in their contract and are not supervised or controlled by CEI.
3. Form 1099-NEC.: A form used to report to the Internal Revenue Service (IRS) and the taxpayer to report payments for services performed for the organization.
4. W-9 Form: A form created by the IRS which obligates a person or entity to provide their federal tax classification and taxpayer identification if they are being compensated for performing a service. How a person or entity reports their tax classification on the W-9 form determines how CEI files the appropriate tax documents with the IRS at year-end.

**Employee vs. Independent Contractor Checklist**

When contracting for services, the following checklist should be used to assist in determining whether the individual performing the services will be classified as an **employee** or as an **independent contractor.** Under the common law test, if an employer has the right to control, both what work will be done and how it will be done, there is an employer-employee relationship.

**Section 1:**

|  |  |  |
| --- | --- | --- |
| **If ANY of the following questions are answered as “yes”, then the individual is an employee and payment must be made through the human resources department.** If the answers to the following questions are all “no”, continue with the questions in section 2.  | Yes | No |
| 1. Has the individual been an employee (not as an independent contractor) of CEI in the last 12 months?
 |  |  |
| 1. Does CEI pay any employee(s) who performs essentially the same duties that are to be performed by this individual?
 |  |  |
| 1. Is the work being performed integral to the day-to-day functioning of the college?
 |  |  |

**Section 2:**

In Section 2, a “Yes” answer either weakens or strengthens the argument that a worker is an independent contractor, indicated by the “X” in the first two columns.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Weakens** | **Strengthens** | **Behavioral Control**Facts that show whether the college has a right to direct and control how the worker does the task for which she/he is hired.  | **Yes** | **No** |
| **x** |  | Does the college *have the right* to tell the worker, when, where, and how the work is to be performed? |  |  |
| **x** |  | Will the college train the worker to perform the services? |  |  |
| **x** |  | Does CEI establish the hours of work or otherwise prevent the individual from being the “master of his/her own time?” |  |  |
| **x** |  | Does the arrangement with this individual establish continuing or recurring work, even if the services are seasonal, part-time, or short duration? |  |  |
| **x** |  | Are work hours set by the college? |  |  |
| **x** |  | Does the college have the right to determine the sequence, details, or means of work performed? |  |  |
| **x** |  | Does the college require services to be rendered personally? |  |  |
| **x** |  | Does the college have the responsibility for hiring, firing, supervising, or paying assistants of the worker? |  |  |
| **x** |  | Does the college dictate which worker(s) should be used or hired to complete the project? |  |  |
| **x** |  | Is the worker typically required to provide oral or written reports to the college? |  |  |
| **x** |  | Does the college tell the worker where to purchase supplies and services? |  |  |
| **x** |  | Does the college provide tools and materials necessary to perform the work? |  |  |
| **x** |  | Does the college have the right to terminate the relationship if the worker fails to obey the instructions of a CEI employee? |  |  |
| **x** |  | Does CEI have the right to designate the place the work will be performed? |  |  |
|  |  | **Financial Control**Facts that show whether the college has a right to control the business aspects of the workers job. |  |  |
| **x** |  | Is the employee guaranteed a regular wage and is compensation made on a recurring bases (e.g., weekly, monthly, or on retainer)? Independent contractors are most often paid for the job by a flat fee. |  |  |
|  | **x** | Does the worker have a significant investment in facilities or materials (other than computer and education)? |  |  |
|  | **x** | Does the worker have a direct interest in or share of any profit or loss of the work accomplished? |  |  |
|  | **x** | Does the worker incur any un-reimbursed business expenses in connection with the project? |  |  |
|  | **x** | Are the worker’s services available to the general public? |  |  |
|  | **x** | Does the worker have a business license to perform the services provided to the college? |  |  |
|  | **x** | Does the worker perform similar services for more than one firm at a time? |  |  |
|  |  | **Relationship of the Parties** |  |  |
|  | **x** | Is there a written contract between the worker and the college describing the worker as an independent contractor? |  |  |
|  | **x** | Do the college and the worker intend for the worker to serve as an independent contractor? |  |  |
| **x** |  | Does the worker have a continuing relationship with the college? |  |  |
| **x** |  | Does the worker devote full time to the business of the college? |  |  |
|  |  |  |  |  |

If after addressing the above common law factors established by the Internal Revenue Service you have determined the person you intend to engage can legally be an independent contractor, please contact the business office for instruction on hiring the contractor.