**Determining Independent Contractor vs Employee**

On occasion it may be necessary for a department to contract/hire for professional services from an individual provider that is not a corporate entity.  These circumstances necessitate careful consideration to determine whether that individual should be classified as an independent contractor or an employee. Each situation must be analyzed independently under the guidance provided by the Department of Labor (“DOL”) and our state pension plans.

Misclassification could result in substantial penalties for both the university and the individual.  The classification of the individual should not be driven by preference of the unit or the individual; rather, it must be a facts and circumstances evaluation for each individual worker under the factors established by the DOL.

This will assist departments in identifying these situations, provide criteria with which to make an accurate classification, as well as provide contact information if additional guidance is needed.

**Date:**

**Form completed by:**

**Name of service provider:**

If needed, add additional explanation to the 5 rules below.

**Rule One: Individual is currently an employee** [ ] **Yes** [ ] **No**

**-**If the individual is currently an employee of the University, the individual must be considered an employee no matter if the work could be considered independent contractor work.

**Rule Two: Individual is a former employee** [ ] **Yes** [ ] **No**

**-**If the individual is a former employee, they should be considered an employee if the work they are returning to perform is similar to the work they performed before they left the university. Individuals performing faculty duties, such as teaching, must be re-employed as a faculty member and are not able to be considered independent contractors. If returning to work NOT similar, please explain below their original work vs current duties.

**Rule Three: Individual is not employed by the university**

**To the best of your knowledge is anyone in the department or University who is currently employed performing the same type of work?** [ ] **Yes** [ ] **No**

**-**When you have an individual who is not employed by the university, whatever classification is determined best for that individual should be applied to all individuals outside the university performing the same work (e.g., an individual outside of the university is classified as an employee after going through the IC/employee evaluation, then all outside individuals performing that same work should be classified as employees).

**Rule Four: Individual is teaching a full semester course** [ ] **Yes** [ ] **No**

**-**If an individual is teaching a full semester course for OSU enrolled student’s course credit, then they must be an employee.

**Rule Five: Individual is an OPERS pension benefit recipient** [ ] **Yes** [ ] **No**

**-**If an individual is an OPERS pension benefit recipient (receiving pension), and Ohio State was the last employer from which that individual contributed to OPERS prior to retirement, that individual is not able to be an Independent Contractor.