

**CHECKLIST TO DETERMINE
RELATIONSHIP BETWEEN WORKERS AND COLLEGE**

***please see discussion document attached.

This checklist is to assist you in determining a worker's employment status: either employee or contractor. Please attach this checklist to Temporary Contract or Short Term Appointment if the worker is determined to be an employee. Attach it to the Professional Services General Contract if the worker is determined to be a contractor.

Description of Activity – Please tick either college or worker		College	Worker
Analysis of Facts related to control			
	1. Who decides what method to use to perform the work? (eg. lecture, audiovisual, hands on demonstration) If yes, tick worker		
	2. Who determines what work is to be done? (eg. Who designs course content? If the course content is determined by an external agency (e.g.WCB) please enter n/a.		
	3. Who determines the class times and location? (or determines when and where the work is done?)		
X	4. Who trains the worker or gives direction on how to do the work? (If yes, tick worker)		
	5. Who decides what work is to be done? (Can the worker refuse work? If yes, tick worker)		
Analysis of Facts related to sub-contracting			
X	6. Can the owner of the business/worker delegate the work or hire an assistant? (if yes, tick worker)		
	7. Who supervises the activities of the worker? (if yes, tick worker)		
Analysis of Facts related to Tools and Equipment			
	8. Who supplies the facilities or workspace?		
	9. Who supplies the handouts?		
X	10. Who supplies the tools or other instructional equipment? (Do they have their own tools? Are tools supplied by the client eg forklift) Note:		
	11. Who covers equipment insurance and maintenance?		
Analysis of facts related to chance of profit/risk of loss			
	12. Who sets the fees or rate		
	13. Is the worker paid a flat fee or an hourly rate? (eg, flat fee would cover all materials, supplies, and time) If yes, tick worker		
	14. Who assumes responsibility for the performance of the work?		
X	15. Does the worker advertise their business? Do they perform work for others? (attach business card or ad copy and tick worker)		
	16. If the worker does not fulfill the contract are they paid?		
FINAL ANALYSIS			
	Total the answers to the questions related to control (#1-5)		
	Total the answers to the questions to subcontracting (#6-7)		
	Total the answers to the questions related to tools & equipment (#8-11)		
	Total the answers to the questions related to profit/risk of loss (#12-16)		
The majority of the answers in Worker or College will indicate whether this is a Contractor or College employee. The `X` lines are the basic indicators of a Contractor. If this checklist indicates a Contractor relationship attach it to a service contract and forward to Finance, otherwise you should be using a temporary contract or Short Term Appointment Form submitted through HR.			

Name of Employee or Contractor: _____

Completed by: _____ Date: _____ 2014

Hiring Practices- discussion of relationship

Purpose: This procedure describes the importance of the distinction between an employee and a self employed worker, and sets out the circumstances which might affect that decision.

Procedure:

The distinction between an employee and a self-employed worker is a question of fact. The tests developed by the courts to determine the nature of the relationship are:

1. **Control Test** - the degree of control over not only what is to be done but how it is to be done, though in the case of professionals or highly skilled workers, control over how work is performed is difficult and, therefore, this test is in itself inconclusive.
2. **Integration Test** – looks to whether his/her work forms an integral part of their overall business. It also looks to business presence, including advertising.
3. **Economic Reality Test** – a worker is less likely to be an employee if he/she bears risk of loss or has a chance of profit.
4. **Specific Result Test** - a worker who is engaged to ensure completion of specific work or a specific project on a flat fee basis. Payment on a time basis tends to be consistent with employment.
5. **Additional Factor to Consider** - If other workers are remunerated for similar work through payroll, the payment to the worker through payroll should be contemplated, *EXCEPT in circumstances where the other worker is paid through payroll through a grandfathering agreement*.

Teaching is an integral part of college activities, and remuneration is generally made through payroll. However, in certain circumstances it is appropriate to treat the worker as an independent contractor. Some of the factors which provide evidence of a contract for service are as follows:

1. Single lecture or a seminar where there is no ongoing relationship with the worker in this capacity, and where the College does not control the content of the delivery other than with respect to topic.
2. The worker provides own facilities and equipment and has other clients using his/her services. The College does not control the delivery content.
3. A course where the payment to the worker is contingent on the number of students attending, and the worker is paid a percentage of tuition (this makes them an independent contractor due to the element of risk for the worker).
4. An organization or a business is engaged to provide the service and is free to send any one worker to teach.
5. Single non instructional activity performed by a worker for a fixed fee without the use of College resources. The activity must be unique and must be unlike any activity, which is remunerated on a salary basis to other College employees.
6. Curriculum development or research performed by a worker for a third party on a fixed fee basis without the use of College resources.

Failure to meet our responsibilities under the Income Tax act can lead to penalties, interest and liability for Tax, CPP and EI.

If a worker disagrees with a decision that payment must be made through payroll, he/she can seek a ruling from Revenue Canada Taxation. Forms are available online. If the ruling indicates that the worker can be treated as a contractor, we will apply the change retroactively so that the worker will be refunded appropriate deductions.