

# CLARK UNIVERSITY

## EMPLOYEE VERSUS INDEPENDENT CONTRACTOR CLASSIFICATION CHECKLIST

When a department requires the services of an individual, it must be determined if the individual is a **temporary employee or independent contractor** before acquiring any services. The information provided below will assist the University in determining how an individual performing service will be classified for federal, state, and FICA tax purposes. Complete Section 1, Section 2, and if necessary, Section 3. It is important that these steps be taken PRIOR TO procurement of services.

If it is clear that the individual would be classified as an employee – *please contact HR for information on the paperwork that should be submitted.*

If the results indicate that the individual **may** qualify as an independent contractor, this form should be submitted with a Check Request and all supporting documentation including contracts to the Controller. Include evidence to support that the individual is customarily engaged in an independently established trade, occupation, profession or business. This may include marketing material, web site, etc. Please note that this determination is not made at the department level.

SECTION 1 GENERAL		DATE: _____
Name of Individual providing service:		Taxpayer ID Number
Is this person (check one) <input type="checkbox"/> A US Citizen <input type="checkbox"/> A Resident Tax Alien <input type="checkbox"/> A Nonresident Alien		General Description of Services:
Department Name	Campus Phone Number	Your Email Address
Name of Clark person responsible for completing this request. : _____		
Signature _____		Date: _____

### SECTION 2: MULTIPLE RELATIONSHIPS WITH THE UNIVERSITY

- Yes  No Does the individual currently work for Clark as an employee?
- Yes  No Does the University expect to hire this individual as an employee to provide the same or similar services immediately following the termination of his/her independent contractor service?
- Yes  No During the previous 12 months prior to the date on which the **independent contractor** service commenced, did the individual have a Clark appointment (including hourly or temporary) to provide the same or similar services?

If the answer is “**Yes**” to **ANY** of the above three questions, the individual should be classified as an EMPLOYEE and paid through the normal payroll process. *Please contact HR for guidance on the next steps.*

If the answer is “**NO**” to **ALL** of the above three questions, proceed to Section 3.

**SECTION 3 – Mass State Law, M.G.L. c 149, s. 148B – Three Factor Test**

Mass State law, M.G.L. c. 149, s. 148B establishes a three-part test that presumes individual is a **contract employee** unless **ALL** three are true. This test is a stricter test than the federal test.

1. Is the individual free from control and direction in connection with the performance of the service, both under the contract for the services and in fact?

	Yes	No
a. The department does not provide instructions to the worker about when, where, and how he or she is to perform the work, does not set he work hours and daily schedule as it would for its employees and the worker is not required to perform the services in a standard or predefined order or sequence set by the department. The department does not provide the same or similar training to the worker to perform the work as it would for its other employees.		
b. The department does not hire, supervise, and pay assistants for the worker or pay for business or traveling expenses of the worker (unless travel is negotiated as a requirement of the contract). Any assistance needed by the worker is self-provided since the worker may not supervise department staff.		
c. The work relationship between the department and the worker will not continue beyond the current project/contract. If the individual is continually hired from project to project and maintains an ongoing contractual relationship with the department, the answer to this section is “NO” and the presumption will be that the individual should be a temporary employee unless all other factors support independent contractor status.		
d. If work is performed on the department’s premises, access is limited to department resources only to the extent necessary to perform services and not because the worker does not have available facilities or equipment. The worker furnishes his/her own tools, materials, and equipment, relies little on department support resources, and has a significant investment in his/her own facilities.		
e. Worker is required to submit oral or written reports to the department documenting work status because department is not overseeing day-to-day performance.		
	Yes	No
2. Is the service performed outside the usual course of the business of the Clark department?		
a. The service performed by the worker is not integrated into the department’s business operations. If the services or work performed are the same or similar as work performed by other department staff/employees or the department as a whole, the answer to this section is “NO” and the individual will be a contract employee.		
	Yes	No
3. Is the individual customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed for Clark?		
a. The worker does not devote substantially full time to the business of the department. The worker provides services for more than one client at a time or to the general public. If the individual’s business is substantially subsidized by a single department with limited funding from other clients, the answer to this question is “NO” and the individual will be a temporary employee.		

If the answer is “NO” to ANY of the above three questions, the individual should be classified as an EMPLOYEE and paid through the normal payroll process. **Please contact HR for guidance on the next steps.**

**If the answer to ALL of the above questions is “Yes”** this form should be sent to the Controller with any and all supporting documentation. Evidence should be included to support #3: individual is customarily engaged in independently established trade, occupation, profession or business. (For example: marketing material, web site, etc.)