

TYPE:	Employment Related
TITLE:	Establishing Employee Employer Relationship
NO.:	EMPL-315
RESPONSIBILITY:	Chief Administrative Officer and Chief Financial Officer
APPROVED BY:	Durham College Leadership Team (DCLT)
EFFECTIVE DATE:	February 2024
REVISED DATE(S):	
REVIEW DATE:	February 2027

1. Introduction

The Canada Revenue Agency (CRA) presumes that all individuals who provide a service are employees unless there is evidence to support classification of the individual as an independent contractor. Therefore, if the College engages an individual as an independent contractor to provide a service, it must be able to support this position.

2. Purpose

- 2.1. To provide standards for distinguishing between employee, special non-employee statuses and independent contractor status to safeguard the College and its employees from potential liability related to incorrect classification.
- 2.2. To indicate procedures and methods for payment of employees, non-employees and independent contractors.

3. Definitions

Refer to [Durham College's Standard Definitions](#).

4. Policy statements

- 4.1. If the department cannot provide sufficient evidence to support the classification of an individual providing a service as an independent contractor, the individual must be employed in accordance with the College's hiring practices. In certain limited circumstances, payments may be made that are classified as non-employee payments.
- 4.2. It is the department's responsibility to ensure that appropriate evidence has been gathered to support the position that the College has engaged an independent contractor or is making a non-employee payment. Any penalties that may result from the failure to withhold statutory deductions will be charged to the department.

- 4.3. The terms and conditions of the College's collective agreements together with the nature of the College's business dictates that individuals who teach a course from which students may receive academic credit will always be classified as employees.

An individual that operates under a business name that is not incorporated will not automatically be given independent contractor status. Current CRA assessing practices do not view registered businesses as constituting a contractor relationship.

5. Procedure

- 5.1. In general, most individuals who are engaged to perform a service for the organization will be employees and must receive an employment contract through the human resources department.
- 5.2. On occasion, the college may retain services from a service provider who is a separate and distinct business. These services are for specific work, services are not integrated into core college operations, for a short time duration, and the Independent Contractor bears the financial risk of the work they provide. To determine that this individual is an independent contractor, the Independent Contractor (ICON) Form must be completed. The ICON Form determines which type of relationship exists based on the following four factors used by the CRA:

The Control Test

The control test deals with the level of management prerogative, direction and control available to the service provider. If the individual/entity providing the service determines how, when and for what cost the services are to be offered and provided, they are more likely Independent Contractors. If college management exercises control over what is to be done, how and when and for what remuneration; it is more likely an employment relationship.

The Ownership Test

The ownership test relates to who generally supplies the tools to do the work. In an employer-employee relationship, the employer generally supplies the equipment required by the employee. In addition, the employer covers the costs related to their use, repairs, insurance, rental and operations. In a business relationship, workers generally supply their own equipment and supplies.

The Chance of Profit/Risk of Loss Test

In an employer-employee relationship, the employer alone assumes the risk of loss. The employer also covers operating expenses. The employee does not face financial risk and is entitled to full salary regardless of the financial health of the business. The income of the employee does not depend on the results achieved at the end of the contract.

The Integration Test

Where the worker integrates their activities into the college's activities, they are considered an employee. If the worker integrates the college's work into their

commercial activities, then the individual is considered an Independent Contractor.

Examples and Payment Method:

Part-time instructors – Employee (payroll)

Guest lecturers – Independent Contractor (accounts payable)

Invigilating – Employee (payroll)

Interpreting services – Independent Contractor (accounts payable)

Miscellaneous non-instructional services – Independent Contractor (accounts payable)

- 5.3. Where a hiring manager believes the individual providing the service qualifies as an Independent Contractor, they will ensure completion of the [ICON Form](#) in its entirety which may be done in consultation with Finance and/or Human Resources.

- 5.4. How to complete the ICON Form:
 - a) The department seeking the service must complete the form electronically to determine the employment status of the independent contractor (unincorporated business) that will be performing services. The determination must be complete in advance of any work being done or services provided.
 - b) The department manager authorizes the information, ensures there is no conflict of interest, and forwards the form to the potential independent contractor.
 - c) The potential independent contractor reviews the form, signs it, and returns it to the department.
 - d) The completed ICON Form is sent to Human Resources to determine if the independent contractor is a current employee, or former employee, of the college. In addition, Human Resources will review the services to be performed, to determine if they are, or are similar to, work that is or can be done by a DC employee.
 - e) If the independent contractor criteria are not met, the department must hire the individual as an employee through Human Resources. If all the criteria are met, the form is submitted back to the original requestor and must be attached to the invoice that is sent to Accounts Payable for payment.
 - f) If an invoice already exists before the form is completed, the form must be approved by the vice-president of the department with an explanation as to why the form was not completed before the services were retained.

Once an unincorporated business has completed an ICON Form and it has been approved, the form does not have to be completed again when services are provided by the same business under the same terms and conditions. This will be reviewed and renewed as necessary on an annual basis.

5.5. Payments of an Independent Contractor:

- a) Prior to the selection of a service, competitive bids may be required before a purchase order can be issued as referenced in the thresholds noted in the Procurement Policy and Procedure.
- b) A purchase requisition must be submitted to Procurement if the service is over \$5,000, along with the completed ICON Form.
- c) Invoices should be submitted to Accounts Payable. When engaging a business, payments issued by Accounts Payable are paid to the name of the business. Invoices issued by an individual will also be paid by Accounts Payable and a T4A will be issued.

All payments to a business are made on the basis of an invoice following the terms and conditions for Durham College vendors.

6. Roles and responsibilities

- 6.1. When an Independent Contractor is engaged, the hiring manager is responsible for completing the ICON form to provide evidence to the CRA that an analysis has been conducted to determine independent contractor status.
- 6.2. Human Resources is responsible for reviewing the ICON forms and verifying compliance with CRA regulations.
- 6.3. The Manager of Accounting is responsible to ensure that the form meets the criteria of an independent contractor as confirmed by the department.

7. Accessibility for Ontarians with Disabilities Act considerations

Accessibility for Ontarians with Disabilities Act (AODA) standards have been considered in the development of this policy and procedure and it adheres to the principles outlined in the College's commitment to accessibility as demonstrated by the Multi-Year Accessibility Plan.

8. Non-compliance implications

Non-compliance with the *Income Tax Act* may result in penalties and interest from the failure to withhold statutory deductions and will be charged to the department.

9. Related forms, legislation or external resources

- Income Tax Act
- [Independent Contractors Guidelines and Polices](#)
- [ICON Form](#)