

<b>TYPE:</b>	Employment Related
<b>TITLE:</b>	Establishing Employee Employer Relationship
<b>NO.:</b>	EMPL-315
<b>RESPONSIBILITY:</b>	Chief Administrative Officer and Chief Financial Officer
<b>APPROVED BY:</b>	Durham College Leadership Team (DCLT)
<b>EFFECTIVE DATE:</b>	June 2020
<b>REVISED DATE(S):</b>	
<b>REVIEW DATE:</b>	June 2023

---

## 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.

## 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.
- 5.2. The ICON Form determines which type of relationship exists based on the following four key points used by the CRA: control, ownership of tools, the chance of profit and risk of loss, and integration.
- 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](#) 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 sends a copy of the form to the independent contractor (unincorporated business) that will be performing services.
  - b) The potential independent contractor completes the form, signs it, and returns it to the department.
  - c) The department seeking the service reviews the form for completeness (i.e. all questions on the form have been answered) and accuracy.
  - d) The completed ICON Form is sent to the Payroll Manager for approval. If approved, the authorized copy will be forwarded to the department by the Payroll Manager.
  - e) If the independent contractor criteria are not met, the department must hire the individual as an employee through Human Resources.

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 providing evidence to the CRA that an analysis has been conducted to determine independent contractor status.
- 6.2. The Manager of Payroll is responsible for reviewing Independent Contractor applications, verifying compliance to CRA regulations and WSIB.

## **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 Accessibility Plan (ADMIN-203).

## **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. Communications plan**

- A message will be posted on ICE alerting employees when new or revised policies and procedures are added to ICE.
- A message will be posted on MyCampus alerting students when new or revised policies and procedures are added.

## **10. Related forms, legislation or external resources**

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