



# Employee vs Independent Contractor

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## Introduction

The Human Resources and Finance Department must process payments to persons providing personal services (Independent Contractors) to First Nations University of Canada in a manner which complies with the [Income Tax Act of Canada](#). Failure to appropriately withhold source deductions is an offence under the Act and related legislation, and this could result in substantial interest, penalties and fines for FNUniv.

This document provides guidance concerning the alternative methods of payment to individuals who provide services to the university. The Executive Director, Finance will approve the classification of any individuals thought to be independent contractors.

## Definitions

*Accounts Payable* is responsible for making payments owed by the University to suppliers and other creditors.

*Payroll* is responsible for:

- Verifying, processing and payment of employee salaries which includes, statutory deductions, pay for time not worked (holidays, vacations, sick time, etc.) and other related items
- For the maintenance and file management of the records for total earnings of all faculty and staff

*Honorariums* are a voluntary payment that is given to a person for services for which fees are not legally required, for example Board of Governors and Elders.

## Policy

All payments for goods and services are subject to university policies and procedures including, but not limited to, Procurement Policy, Conflict of Interest Policy and Allowable Expense Policy.

The classification and taxation treatment of workers considers two (2) basic categories of employment relationships.

(1) Employee-Employer - requires withholding of source deductions (income taxes, Canada Pension Plan (CPP) premiums and Employment Insurance (EI) premiums) by the employer.

(2) Independent Contractor - requires the Independent Contractor to collect and pay the GST if revenue exceeds \$30,000 over a twelve-month period.

The Canada Revenue Agency (CRA) along with other governing agencies (Employment Standards, WCB) take a rigorous audit approach of companies and not-for-profit organizations with respect to the classification and taxation of employees versus independent contractors. FNUUniv must be in compliance with current assessing practices and legislation. FNUUniv must ensure that any individual classified as an independent contractor meets the requirements set out by CRA. Otherwise, these individuals must be classified as employees and taxed as such.

## **Exemptions**

Invoices from legally incorporated companies which provide services that are not normally provided by employees of the university will be treated as payments to independent contractors and paid by Accounts Payable. This guideline does not apply to payments to non-resident individuals or incorporated entities that provide services that are not normally provided by employees of the university.

## **Role and Responsibilities**

All persons with responsibility for hiring and paying faculty, students and staff must be aware of, and comply with the Acts and the Regulations. The policy and guidelines outlined in this document are derived from Canada Revenue Agency (CRA) assessing practices and regulations. There is little flexibility in these regulations.

## **Consequences for Noncompliance**

Failure to comply with this policy is an offence under the Income Tax of Canada Act and related legislation and could result in substantial interest, penalties and fines for FNUUniv. Individuals in breach of this policy may be subject to disciplinary action up to and including termination.

## **Processes**

### **Employee of More than One Department or Providing Numerous Functions**

If an individual provides numerous services to FNUUniv, and the individual is considered an employee for one of the services, then they will be treated as an employee for all services rendered to FNUUniv.

### **Registered Businesses (Not Incorporated)**

An individual that operates under a business name that is not incorporated will not be automatically given Independent Contractor status. Current CRA assessing practices include various tests and standards as described later in this policy to determine how such businesses are to be treated for tax purposes.

### **Sessionals**

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Providers of part-time academic instruction are to be paid through Payroll with applicable withholdings and reported on a T4. This is true for full courses and half courses.

## **Honoraria**

Honorariums paid to individuals are processed by Payroll for both those classified as employee status and those classified as non-employee status. For those classified as non-employee, such payments are not subjected to statutory source deductions and are reported on a T4A. In the case where an individual is a FNUUniv employee and is paid an honorarium, the payment is treated as employment income, subjected to all statutory withholdings of source deductions and as such is reported on a T4.

## **Independent Contractors Paid by Accounts Payable**

The university may retain services from a service provider who is a separate and distinct business. These services are for specific work, services not integrated into FNUUniv's operations, for short time duration, and the Independent Contractor bears the financial risk of the work they provide to FNUUniv. In those cases, where the Independent Contractor is performing valid services as an Independent Contractor, an invoice is processed through Accounts Payable and no income tax is withheld. These Independent Contractors are not to provide services that are normally provided by employees of the university as this would mean they are integrated into FNUUniv's operations. Invoicing, purely to avoid the source deduction of income tax and employee deductions does not relieve the university from the legal liability to withhold and remit source deductions. Therefore, the assumption will be that a service provider is an employee first until proven to be an Independent Contractor. Unincorporated service providers invoicing Accounts Payable are required to report this income on their personal income tax returns. FNUUniv will not provide a T4A for this income. Therefore, the individual must retain copies of invoices for use in completing their personal income tax return.

If the Independent Contractor is incorporated and provides services that are normally provided by employees of the university, they will be paid by Accounts Payable.

## **Employees Paid by Payroll**

The university may obtain services by hiring an individual as an employee. Payments to employees are processed through Payroll and applicable withholding and reporting of taxes is made to CRA. The university's reporting requirements are separate and distinct from reporting requirements of the service provider/employee. CRA has the power to make an income tax reassessment in respect of a payment to an individual however made which it considers to be employment income.

## **Determining if Employee or Independent Contractor**

To determine if a service provider is an employee or an Independent Contractor, you need to examine and analyze the terms and conditions of the worker's service/employment contract as it relates to the four factors discussed below.

### **1. 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 FNUUniv management exercises control over what is to be done, how and when and for what remuneration; it is more likely an employment relationship.

## **2. 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.

## **3. 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.

## **4. The Integration Test**

Where the worker integrates their activities into the university activities, they are considered an employee. If the worker integrates the universities work into his/her commercial activities then the individual is considered an Independent Contractor.

## Related Information

- [Income Tax Act of Canada](#)
- [The Saskatchewan Employment Standards Act](#)
- [The Worker's Compensation Act, 2013](#)
- Included but not limited to FNUniv [Procurement Policy](#), Conflict of Interest Policy, [Allowance Expense Policy](#)