

# **Individual Worker Classification Compliance Review**

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# Agenda

- 1. Worker Classification: Employee or Independent Contractor**
  - Legal Implications
  - Findings
  - Factors in Classification Decision and Examples
  - Required Changes Moving Forward

# Compliance Implications

Individual Worker Classification: Employee vs Contractor

- Multiple legal standards
  - IRS
  - Dept. of Labor
  - Department of Homeland Security and U.S. Citizenship and Immigration Services

# Findings

- The Compensation team conducts over 100 individual worker classification reviews per month
- Assumption exists that most will be classified as Contractors
- Many forms are submitted late or incomplete

# Commonly Used Reasons for Contractor Requests

Recent requests to hire as contractors:

1. Research Assistant
2. General administrative support
3. Tech support for when employee is out sick
4. Instruction
5. Teaching Assistant
6. Research subject
7. “Honorarium”

# IRS Factors in Decision-making: Contractor vs. Employee

Contractor	Employee
Individual has almost complete control over <b>how</b> the work is done	University directs when, where, and how work is done
Outcome focused	Acting under supervision; defined tasks and duties
Generally, they have a trade or business as a sole proprietor or an independent contractor and offer their services to the public	Work exists and is part of core NU business (e.g., teaching, career advising, research support)
Typically given a job or project to work on without the University controlling when and how they do it	University has the <b>right</b> to control the details of how the worker's services are performed
<b>The IRS presumes that a worker is an employee unless there is evidence to the contrary</b>	

# Examples of Worker Classifications

## Scenario 1

A Unit is seeking a graphic designer to create a marketing flyer for a new program. The Unit finds someone with a graphic design business. The University will provide the graphic designer with a general idea of expectations and deadlines. The cost/price for the project is determined up front with the final payment made upon delivery of the final flyer.

**Classification:** **Independent Contractor**

## Reason

***The University is focused on the end-product: the flyer, not the details of how the contractor does their work***

- The contractor has the right to hire their own workers if necessary
- They would use their own equipment
- The graphic designer can decide what time of day or night they work on the project
- The contractor also owns a business in which they offer their services to the public

# Examples of Worker Classifications

## Scenario 2

An individual is brought into a lab to assist a faculty member with a research project. The faculty member trains the assistant on using the lab equipment and provides support and direction to the assistant.

**Classification:** Employee (Research Assistant, Research Technologist, etc.)

## Reason

### ***Research is a core component of the University's business***

- Many of the University's research roles directly support a PI

### ***The University has the right to manage how the work is completed***

- The University/faculty member has the right to provide direction over how the work is done
- The worker will complete defined tasks with defined hours of work and in the defined environment. In this case, University equipment will be used

### **Implications**

- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties



# Examples of Worker Classifications

## Scenario 3

An individual is hired to supervise and monitor summer enrichment program participants who are staying in the residence halls.

**Classification:** Temporary Employee

## Reason

***The University has the right to manage how the work is completed***

- The worker will complete defined tasks with defined hours of work

### **Implications**

- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties

# Examples of Worker Classifications

## Scenario 4

A department is developing a new initiative and needs external expertise to work through complex return-on-investment and scenario analysis. It will be a six-month project. During the project, the worker will interview staff, conduct data analysis, and do external benchmarking. The individual will present a draft proposal for review and at the project's end will deliver a final presentation and recommendation.

**Classification:** Independent Contractor

## Reason

***The project is time-limited with a defined outcome. It requires independent judgement and expertise. The contractor can provide this same service to other customers, even while working with the University.***

- The contractor has the right to hire their own workers if necessary and may own a business
- They would use their own equipment

# Examples of Worker Classifications

## Scenario 5

An individual is hired to assist an Instructor/Faculty member with reading and grading course assignments, and running discussion sessions

**Classification:** Employee (Teaching Assistant; Usually Temporary Employee)

## Reason

***Providing Teaching assistance (TA) is part of NU's core business. The individual will provide defined duties overseen by the University. The University has the right to manage how the work is completed.***

- The University/faculty member has the right to provide direction over how the work is done
- The worker will complete defined tasks with defined hours of work and in the defined environment

### Implications

- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties

# Examples of Worker Classifications

## Scenario 6

Non-Employee research subjects, honoraria, student refunds, gifts, prizes

**Classification:** These are neither employees nor contractors as no services are being provided. Please follow appropriate payment vehicles.

## Reason

*These do not meet contractor nor employee classification criteria*

Please note that honoraria are nominal/token payments in partial recognition of someone's actual worth. These are made to symbolize respect or confer distinction for recipient. These are not full payments for services.

# Examples of Worker Classifications

## Scenario 7

An academic department needs additional assistance to review student applications due to the high volume of applicants. The worker will perform their duties alongside NU staff who perform these duties.

**Classification:** Employee (Usually Temporary Employee or Term Appointment)

## Reason

***The individual will provide defined duties overseen by the University. The University has the right to manage how the work is completed***

- Training will be provided to the individual
- Standards are defined for the reviews

***The University has the right to manage how the work is completed***

- The University/faculty member has the right to provide direction over how the work is done
- The worker will complete defined tasks with defined hours of work and in the defined environment. In this case, University equipment will be used

In addition, application reviews are an essential part of the University's core business and performed by existing University employees

### **Implications**

- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties

# Examples of Worker Classifications

## Scenario 8

An individual is needed to provide administrative duties in an office when a staff member is on a two-week vacation, and during the office's busy season. The worker will be answering phones, greeting students, and coordinating schedules.

**Classification:** Temporary Employee

## Reason

***The University has the right to manage how the work is completed***

- The worker will complete defined tasks with defined hours of work

### **Implications**

- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties

# Examples of Worker Classifications

## Scenario 9

A student is hired to check in and provide general assistance to participants attending an event or conference

**Classification:** Temporary Employee

## Reason

***The University has the right to manage how the work is completed***

- The worker will complete defined tasks with defined hours of work

*There is no final product delivered. Even if the work assignment was only for one day, the student will be considered a temporary employee.*

### **Implications**

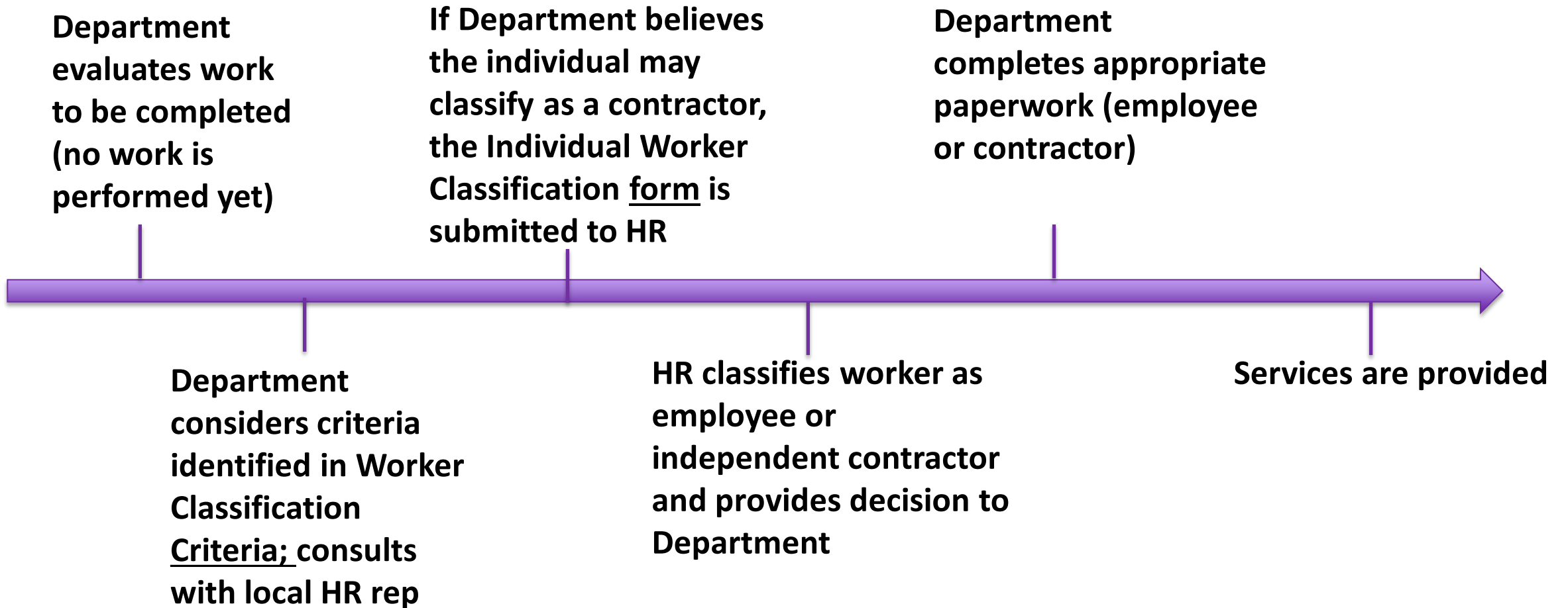
- If the individual works more than 40 hours in a week, they would be eligible for overtime payments given the nature of the duties

# Recent Steps Taken

- New Individual Worker Classification form created, replacing ICQ
- Developed Classification Criteria document
- Validated that criteria used to correctly classify employees and contractors are consistent with current law



# What Compliance Looks Like



# Worker Classification Timeline

Phase I Steps	When
Soft launch	Immediate
Finalizing /Testing new form and process	June 1-14
Launch*	June 15
Monitor	Ongoing

*\*All ICQ / Request for Payment to Individuals forms will be removed from webpages as they will no longer be accepted*

# Keys to Success in Worker Classification Compliance



# QUESTIONS