

Scope of Work

Classifying Services as
Independent
Contractor Work at CU

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Learning Objectives:

- Understand legal and practical differences between a contractor and employee
 - Using a Decision Tree, IRS Guidelines and the SOW Form, to help you make the right classification.
- How the Scope of Work (SOW) form is a record and legal document
- Reduce the risk of misclassification

Agenda

Why This Topic
Matters

Classification
Tests & Tools

Key Differences:
Employee vs.
Contractor

Building a
Strong SOW

Contracting with
former CU
employee

Red Flags &
Risk Prevention

Support & Tools
Available

Final Message

Discussion &
Q&A



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Why This Topic Matters



Misclassification Risks:

IRS penalties & fines

Legal liability: (e.g., wage claims, benefits)

Reputational risk



Alignment Values:

Protect the organization

Support hiring managers

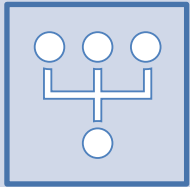
Ensures compliance



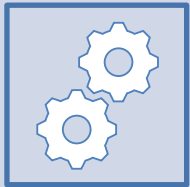
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Control: Key difference between an employee and a contractor



Employees: The organization controls **how, when, and where** the work is performed.



Contractors: The individual has **control over how** the work is completed, using their own tools, schedule, and methods.



IRS Common Law Test



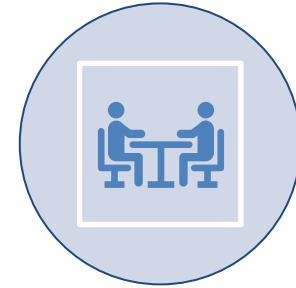
BEHAVIOR CONTROL:

Right to direct and control details and means by which an individual performs services.



FINANCIAL CONTROL:

Right to direct and control economic aspects of the individual's activities



RELATIONSHIP OF PARTIES:

The intent of parties concerning status and control of worker



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Employee vs. Contractor – At a Glance

Aspect	Employee	Contractor/Consultant
Control	Employer directs how work is done	Contractor controls how work is done
Training	Provided by employer	Uses own methods/skills
Tools/Equipment	Provided by employer	Provides own tools
Schedule	Set by employer	Sets own schedule
Benefits	Eligible	Not Eligible
Tax Treatment	Employer withholds taxes	Pays own taxes (1099)
Duration/Integration	Ongoing, integral to operations	Temporary or project-based



Questions to Consider

Is the work
focused on a
specific project?

Does the work
term for a finite
amount of time?

Will the worker be
paid based on the
deliverables?

Does the work
require
specialized skills?

How much control
would your
department have
over the worker?

Is the proposed
work a core
function of your
department?



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Contractor Decision Tree

Step 1

Who controls how the work is done?

- A.** The business controls how, when, and where work is done
 - *Likely an Employee*
- B.** The worker decides how to perform the work
 - **Go to Step 2**

Step 2

Who controls the financial aspects?

- A.** The worker is paid hourly/salary, with no risk of loss or gain
 - *Likely an Employee*
- B.** The worker invests in tools, sets their rate, and may profit or lose
 - **Go to Step 3**

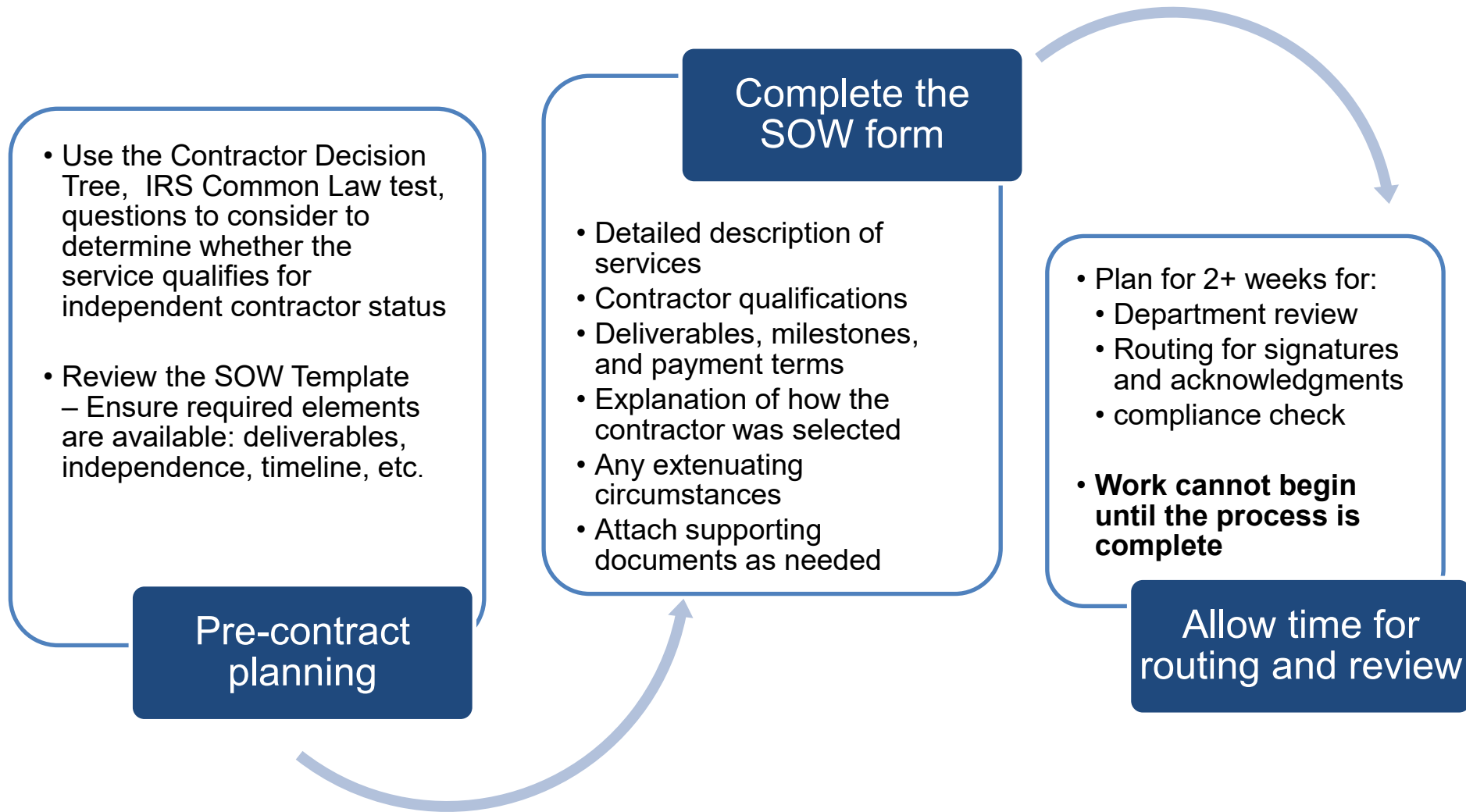
Step 3

What is the nature of the relationship?

- A.** The relationship is indefinite, with benefits and integrated work
 - *Likely an Employee*
- B.** The relationship is project-based, short-term, and outlined in a contract
 - **Likely a contractor**



Before the work begins....



Describe the Services

- Clearly outline what the contractor will do
- Include the scope and boundaries of the work
- Be specific—avoid vague descriptions

Contractor's Qualifications

- Special skills, certifications, or experience
- Why is this individual or business the best fit?

Deliverables and Milestones

- Include milestones, due dates, and expected format of deliverables
- Helps demonstrate independence and outcome-based focus
- These should be listed on the invoices



A termed employee cannot be contracted as an independent contractor to perform the same work.

(This includes temporary workers, post-docs, and anyone with a CU appointment in HCM.)

Why this matters:

“If the individual continues to perform the same work in the same capacity as he or she did when employed, reclassifying the individual as a contractor will be ineffective.”

- SHRM (Society for Human Resource Management)



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Compliance Implications:



- **IRS & DOL standards** require proof that the individual is truly independent
- **CU Payroll guidance** prohibits issuing both a **W-2 and 1099** in the same tax year for the same person
- Violations may lead to **audits, penalties, and repayment of benefits**

Best Practice:



- Evaluate the nature of the work and employment history
- Seek guidance before hiring a former employee as a contractor
- Always use a new Scope of Work with clearly defined independent responsibilities



Contracting with a Foreign National

- The same guidelines apply to foreign nationals as US citizens to perform services as contractors or consultants.
- Services provided ***within the US*** are subject to tax withholdings.
- Contact the CU International Tax Team with any questions before the work begins for clarification on this process.



Red Flags to be aware of

Current or former employee paid as a contractor for similar work

Long-term engagement without regular review

Contractors doing core employee work

Invoices that do not include deliverables- only hours worked

No written agreement or unclear SOW



Support & Tools Available



Independent contractor
(self-employed) or
employee?

Hire An Independent
Contractor (Scope of Work) |
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Employee or Independent
Contractor Classification
Under the Fair Labor
Standards Act (FLSA)



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Final Message – Getting the Classification Right

Same work = Same Classification

- If an individual performs the **same work** in the **same capacity** as another CU employee, classifying them as a contractor will be ineffective or non-compliant

Bottom Line

- Classification is **not about convenience**, it's about **compliance**
- Contractors must operate **independently**, not like employees

When in Doubt- Reach Out

- Contact the SOW team before engaging a contractor.
- Especially if the individual was recently employed at CU.

Questions?



For more information :
<https://www.cu.edu/sow>

Thank you!

For more information :
<https://www.cu.edu/sow>

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