

**Independent Contractor Determination
Process Documentation**
As of July 1, 2009

This policy is effective immediately for renewals of existing independent contractor agreements and for new engagements of workers who may be independent contractors. The only exception is if your unit contracts with a guest speaker receiving an honorarium for a one-time speaking engagement. In this instance, you may use the “Model Speaker Release Form (Paid)” available on the Office of the General Counsel website, Model Documents page, at <http://ogc.harvard.edu/documents/index.php>.

1. Review the Independent Contractor Classification policy located at http://vpf-web.harvard.edu/ofs/policies/documents/indep_contr_class.pdf
2. Designate an individual in your department to review classifications and designate signatories for the Independent Contractor Questionnaire.
3. Begin by answering the questions at Part I of Appendix A, located at page 6.
4. If you have not classified the worker as an employee based on Part I, next apply the Massachusetts Independent Contractor Law found at page 4 of the policy and set forth below. This law **creates a presumption that a work arrangement is an employer-employee relationship unless the party receiving the services can overcome the legal presumption of employment by establishing that 3 factors are present:**
 - The worker is free from the presumed employer’s control and direction in performing the service, both under a contract and in fact (i.e., carried out with minimal instruction, completes job using his own approach with little direction, dictates own hours);
 - The service provided by the worker is outside the employer’s usual course of business (i.e., is the worker’s service necessary to the business of the unit/department or separate and merely incidental? Will the worker be accomplishing tasks similar to those performed by regular employees? e.g., accounting firm hiring mover is not employee whereas drywall company hiring drywall installer is employee); *and*
 - The worker is customarily engaged in an independent trade, occupation, profession, or business of the same type (i.e., is worker available to others or dependent on this employer? Would worker survive financially if relationship with employer was terminated?)
5. If you have not classified the worker as an employee based on the above, next (and last), complete the Independent Contractor Questionnaire located at Appendix A on pages 6-8 of the policy which sets forth the 23 IRS factors.
6. If you believe that the worker meets the all of the above criteria, please forward a copy of the Independent Contractor Questionnaire to Tracy Walden at twalden@fas.harvard.edu. If the worker is properly classified as an independent contractor, Tracy will help you determine which contract to use. You should then have the questionnaire and contract signed, keep copies of both for your files, and send copies of both to Tracy. If you have any questions, please call Tracy at 5-8240.