

## EMPLOYMENTS vs NON-EMPLOYMENT SERVICES

The issue of whether a person providing services to the University is doing so in an employment or non-employment (independent contractor) relationship has long been a source of some uncertainty, not only for Brandon University, but for other universities as well. The rules related to this are somewhat difficult to understand and Revenue Canada often prefers to judge each case according to its individual circumstances.

The following is a brief synopsis of the rules relating to this issue, the decisions that need to be made in consideration of the rules, and how the payments of these individuals will be handled at Brandon University.

### The rules that apply

1. Persons working on a regular basis providing services to one person or company for a fixed amount, whether computed hourly, weekly, monthly, or annually, are employees.
2. Persons providing services to a series of different payors at essentially the same time, using their own expertise to determine the nature or degree of service and to prioritize the demands of their clients, are probably operating a business and performing as independent contractors.

These rules are very general. Many situations will actually fall somewhere between the two positions represented above. They are also written for generic application as are the tests that follow. Brandon University can be substituted for the words payor or employer or company and Brandon University's applications need to be considered in relation to the generic ones stated.

### Tests to determine status

In determining whether an individual is involved in an employment or a non-employment relationship, the following tests should be applied. An affirmative answer to one or more of these tests would be a reasonable indication that the person to be hired is probably operating a business. The tests also need to be considered in the context of the terms and conditions of the agreement between Brandon University and the individual to be hired. In all cases, the final determination on the status of the person hired to provide goods or services will be made by Administration and Finance through Personnel Services or Financial & Accounting Services.

1. Was the worker subject to complete control of the payor as to the use of time and the way in which the services were to be performed?

If the contract is to perform a specific task or achieve a particular result, but does not specify how it is to be done, the relationship may be one of self-employment. If, on the other hand, the contract requires the services of one person to be at the disposal of another for a fixed or indeterminate time, the relationship may be that of an employee.

2. Did the worker supply his/her own tools?
3. Did the worker have the opportunity for profit (in an accounting sense) from his/her services?
4. Did the worker have the risk of loss from this enterprise?

5. Did the person offer his/her services in the context of a coherent business enterprise rather than merely putting him/herself in the service of a particular payor. Examples of this would be having a business licence, being a GST registrant, being registered for Workers' Compensation, carrying liability insurance, using pre-printed letterhead and business forms, having a business name, etc. A non-employment relationship is usually evidenced by a purchase order or some other form of purchase agreement between Brandon University and the enterprise. This is called the "organization test" and is indicative, but not conclusive, in itself.
6. The "integration test" examines the role of the individual and how integral the work is to the business. If the work can be separated from the business (University) without impacting the regular business of the University, the individual may be self-employed.

A written contract or agreement indicating the individual is not to be considered an employee does not, in itself, change the nature of the relationship if the particular circumstances are not consistent with the statement. However, where there is doubt as to the nature of the relationship, the contract may be examined to determine the intention of the parties.

All services performed under a collective agreement [BUFA, MGEU, IUOE(A) & (B)] with Brandon University must be performed by individuals operating in an employment relationship with the University.

When all tests have been applied and the evidence does not clearly indicate an employment or non-employment relationship, Brandon University will normally consider the person an employee and deduct and report accordingly.

#### How payments are to be handled

Payments to individuals for services performed for Brandon University can be processed in one of three ways depending on the circumstances. If the person is determined to be:

An employee	Paid through the Payroll Department (on a Payroll Information/Time Sheet); Full deductions (U IC, CPP, Income Tax, benefits, etc.); Reported at year end on a T4.
Not an employee	(a) Paid through Accounts Payable (on a cheque requisition); No deductions; Not reported at year end to recipient or Revenue Canada  (b) Paid through the Payroll Department; Deducted for income tax only; Reported at year end on a T4A.

For those retained in a non-employment relationship with the University, the payment can be processed according to (a) or (b) above, again depending on the circumstances in either case. The onus is on the recipient of the funds to report those funds and to pay the appropriate income tax.

Cheque requisitions must be accompanied by an invoice from the business, and/or a copy of a contract signed by both parties indicating the terms and conditions of the engagement. As a last resort, in the absence of either of the above, a letter from the person responsible for hiring the individual who also has budget authority is required to indicate the terms and conditions under which the person was hired. Requests for payment without sufficient documentation may be returned for clarification.

Requests for payment of an employment contract must be made on a payroll information sheet.

As a matter of convenience, and to ensure employees earnings are fully reported, anyone who is or has been an active employee in the current calendar year and who also does work in a non-employment relationship will be paid through Payroll and will be issued a T4A for those earnings at year end.

Those hired in a non-employment relationship who are not also employees, will be paid through Accounts Payable and there will be no further reporting at year end.

When an individual providing the services is doing so on behalf of a group or organization, it is necessary to have the contract drawn with the group or organization so that errors and unnecessary assessments are not done under the assumption that the individual who is actually doing the work is solely responsible.

Formerly, Brandon University had a practice of allowing requisitions for payment of employment engagements with a value less than \$250 to be processed through Accounts Payable. This practice will no longer be allowed. All employment payments, regardless of dollar value, will be processed through the Payroll Department and deductions will be made as applicable.

Any questions or concerns related to these issues should be referred to the Director, Personnel Services, or the Director, Financial & Accounting Services.

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