



Fee for Service Contract – FAQ

1. What are the criteria used to distinguish between an employee/employer relationship and a contractor/contractee relationship?

Over the years, various tests have been developed and utilized by the courts to determine whether an individual is an employee or an independent contractor. The need for these tests arose not just in applying income tax legislation, but also in applying employment legislation (including the *Canada Pension Plan* and the *Employment Insurance Act*), and in actions concerning vicarious liability and wrongful dismissal.

Here are the tests applied by Canada Revenue Agency (CRA) when determining whether a “contract of service” (employment) or a “contract for service” (self-employed) relationship exists:

- the level of control the payer has over the worker;
- whether the worker provided the tools and equipment;
- whether the worker may subcontract the work or hire assistants;
- the degree of financial risk taken by the worker;
- the degree of responsibility for investment and management held by the worker;
- the worker's opportunity for profit; and
- other relevant factors (i.e. contracts)

A more extensive discussion of these criteria is contained in a pamphlet prepared by CRA.

2. Is the above influenced by whether or not the proposed contractor is currently a UPEI employee?

In most cases, an employee is considered to be in a “contract of service” (employment) for all services provided to the institution, particularly if the services are similar in nature. An exception may exist if there is a vast amount of evidence that the individual carries on a separate independent business, not related to his or her employment relationship with the University.

3. Does a Fee For Service contract follow tendering processes? What are the parameters for determining when such processes must be followed?

A Fee For Service contract must follow the same processes and rules as for the procurement of any goods or services by the University. Contact the University's Procurement Department before entering into any negotiation with an independent contractor. Depending on the value of the contract, competitive bids or tendering may be required.

4. What forms are required? Who is the keeper of these forms? Whose responsibility is it to complete such forms?



A *Contract Approval Control Form* (cover sheet) is used to route the contract through the signing process. Two original copies of the contract plus a signed *Contract Approval Control Form*, and a completed *Purchase Requisition* are all sent to the Comptroller's Office. The *Contract Approval Control Form* and templates of the various *Fee For Service Contracts* can be found on the Comptroller's Office website.

The process is described under the Fee For Service Contract page. Contact the Comptroller's Office if you have any further questions. Also, see question #6 for more details on research contracts.

5. What is the distribution schedule for the forms – Comptroller's Office first or Human Resources?

All contracts, except for those involving research accounts (which start with the number "6"), must be reviewed by the Comptroller, and signed by an official University signing officer, so please send your completed paperwork to the Comptroller's Office.

Any "contract for service" between an individual and the University is then forwarded by the Comptroller's Office to the Director of Human Resources for review. The Director of Human Resources, in consultation with the Comptroller, determines whether a "contract of service" or "contract for service" exists.

6. If the Fee For Service contract involves a research account, which starts with the number "6" - is the Office of Research Services' involvement required?

All Fee For Service contracts which involve research accounts are to be forwarded to the Research Contracts Officer, who will route them through Research Services' signing process.

7. Once the UPEI sign-offs are secured, whose responsibility is it to ensure that the copies are sent to the contractor?

The Comptroller's Office will forward a copy of the contract to the Accounting Office, but the originator is responsible for ensuring that signatures are obtained from the second party. As well, the contract originator must ensure that originals of the fully-signed contract are distributed to both the contractor and the Comptroller's Office.

8. At what stage is the Purchase Order requisition required?

A requisition must accompany the contract when it is forwarded to the Comptroller's Office for review and signature.

9. Does UPEI use a standard format for its contracts?

While contract formats developed by others are also acceptable, UPEI uses standard formats located under the Fee For Service Contract page. The standard formats may be amended to suit particular contract terms as required.