

RCUH Employee/Independent Contractor Review: Frequently Asked Questions

1. What is an RCUH HR Employee/Independent Contractor Review?

[RCUH Policy 3.225](#) outlines the classification of individuals providing specialized services as “employees”, “independent contractors” or “non-employees”. An Employee/Independent Contractor Review answers the question, “Should we hire this individual as an EMPLOYEE or engage with them as an INDEPENDENT CONTRACTOR?”.

In 1996, the IRS estimated that about 15% of employers misclassified their employees as independent contractors. Government and academic studies estimated that in 1984, U.S. employers misclassified a total of 3.4 million individuals resulting in an estimated revenue loss of \$1.6 billion ([GAO 09-717](#)). In 2011, the Department of Labor and the Internal Revenue Service entered a MOU to share information with other relevant agencies through an updated referral process.

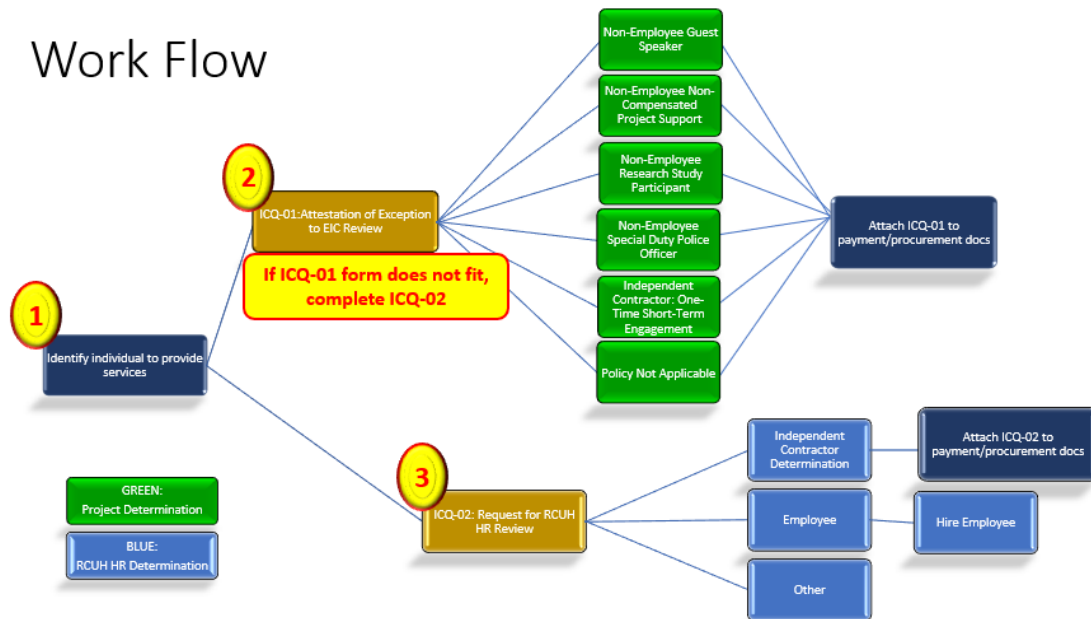
The RCUH HR Employee/Independent Contractor classification is just one consideration on your path to engaging with a contractor. ***An HR Independent Contractor Review does not make any determinations on allowability of payment actions.*** Please consult your Fiscal Administrator or RCUH Procurement with any questions on the Agreement for Services or payment actions.

2. Why does it matter?

From a human resources perspective, the concerns include, but are not limited to: Employment laws, Employer taxes (Internal Revenue Code), minimum wage and overtime (Department of Labor, Fair Labor Standards Act), unemployment insurance, wage replacement and medical coverage under Workers’ Compensation, and wage replacement under Temporary Disability Insurance. Misclassifications can be costly. Under the Code of Federal Regulations CFR 200.441, costs resulting in fines, penalties, or damages are unallowable. Project funding cannot be used to pay for any fines, penalties, or damages due to misclassified individuals.

3. I am looking to engage with an individual. Where do I start?

See a brief overview of the work flow below:



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4. What are the Non-Employee Designations that are exempt from RCUH HR Review?

These detailed definitions can be found on the form: [Attestation of Exception to RCUH HR EIC Review \(ICQ-01\)](#)

A. Guest Speaker:

Services Provided: Individual will be speaking (only) at an educational event, conference, or similar function. Individual selected through invitation due to their recognized expertise and/or abilities that is unavailable within the project or program.

Duration: One-time (non-recurring) event

Employment: Speaker(s) may **NOT** be a current employee of RCUH, UH. Speaker may NOT be a current employee of a State Agency unless their participation is outside of their work scope and schedule and not considered part of their duties.

Compensation: None. They may receive up to \$1,000 honorarium (NOT considered a fee for services). Travel reimbursements and daily per diem consistent with applicable Federal Guidelines may be provided.

B. Non-Compensated Project Support (NCPS):

Services Provided: Individual provides short-term support services that complements and/or augments a Project's objectives. Individual invited to provide support to project's objective or mission due to their recognized expertise and/or abilities that are unavailable within the project or program. Individual is not evaluated nor are they supervised/monitored as they are self-directed or part of the scheduled program.

Duration: Up to 30 calendar days

Employment: May be an employee of RCUH, UH or State Agency. Participation has been approved (via memo or other program support documentation) by individual's supervisor (i.e., Dean, Director, or Principal Investigator). There is no conflict with provisions of Chapter 84 since the individual is not receiving any compensation for their services or time.

Compensation: No compensation is provided but travel reimbursements and daily per diem consistent with applicable Federal Guidelines may be provided.

C. Confidential Research Study Participant:

Services Provided: Short-term/day-to-day use of participants for research projects involving confidential human surveys. Participant's identities must be kept confidential and do not perform any work for the project. The Principal Investigator will furnish the identity of the participants and/or subjects, as needed consistent to government regulations or grant requirements. Principal Investigators must secure necessary authorizations pursuant to University of Hawaii policies and any applicable insurance for the activities involving these participants.

Duration: N/A

Employment: N/A

Compensation: Projects may authorize token payment up to \$100.00.

D. Special Duty Police Officer:

Services Provided: Short-term/day-to-day (off-duty) use of Special Duty Police Officers for applicable work assignments (e.g. traffic control, escort duty, etc.).

Duration: N/A

Employment: Special Duty Police Officers are employees of their respective County Police Departments (Hawaii County Police Department, Maui County Police Department, Kauai County Police Department, and the Honolulu Police Department).

Compensation: The Police Department will charge your project with the applicable hourly rate, for any expenses and administrative fees. Payment must be paid to the applicable County Police Department or individual. Each County may differ on its procedure and cost; therefore, we recommend you contact the Police Department or view their websites for up-to-date information. Refer to the RCUH Policy [2.005](#) and [2.007](#) relating to handling payments.

E. Non-Employee Independent Contractor: One-Time, Short-Term Engagement

Services Provided: One-time, short-term engagement of an individual providing specialized services and deliverables to the project.

Duration: One-time, short-term engagement of 90 calendar days or less.

Employment: Individual may **NOT** be a current or recent former employee of RCUH, UH or State Agency. Individual must be free from RCUH project control and direction in connection with the performance of service, both under a contract for the performance of the service, and in fact. The service performed by the individual is outside of services provided by UH or RCUH employees. The individual must be set up as a legitimate business – engaged in an independently established

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trade, occupation, profession, or business of the same type as the services being performed for the project. If work is physically completed in Hawaii at any time, an active Hawaii GET (General Excise Tax) license is required.
Compensation: Total payments to the individual not to exceed \$3,000.

5. My engagement does not fit the Non-Employee Designations as described in the form: [Attestation of Exception to RCUH HR EIC Review \(ICQ-01\)](#) - now what?

Complete the form: [Independent Contractor Questionnaire \(ICQ-02\): Request for RCUH HR Review](#) and submit along with any required documentation (screenshot of GET, proof of business, etc.) for RCUH review.

6. After review, RCUH HR determined that my engagement was actually an Employee action. What are my options?
- a) Please contact RCUH HR Employment at: rcuh_employment@rcuh.com to potentially consider a Non-Recruited hire through RCUH.
 - b) If additional information is available but was not provided in the initial request, you may request a re-evaluation, however the determination provided by RCUH HR is considered final.
7. If I received an IC determination to engage with a certain individual as an independent contractor in the past, may I use the same determination if that individual will be performing the same type of work for a future date?

If the previous determination that was distributed to the project was for a duration that covers the new dates of work, then the EIC determination will still apply. However, if the new dates requested were not mentioned in the previous determinations, then the project may need to resubmit an EIC request to RCUH HR for an updated determination.

8. What are the required attachments when submitting an EIC request for review?

Answer all the fields on the form and have the PI sign at the bottom to confirm the information. Then, attach necessary supporting documentation:

- a) Hawaii GET license (screenshot from <https://hitax.hawaii.gov/>) MANDATORY if work is physically completed in Hawaii as contractors should be set up to pay Hawaii taxes.
 - b) Proof of business (i.e., website, business card, CV) - MANDATORY. Proof of legitimate business setup is part of the review process.
 - c) Agreement for services or contract - Optional. This can be helpful to outline deliverables and payment method if the project already has it prepared for review.
9. What is RCUH HR's role in the engagement of an Independent Contractor?

RCUH HR will provide a classification of the individual you are looking to engage with (Available Determinations: Employee, Independent Contractor, or Other) for timely and completed EIC review requests based on the information submitted. The RCUH HR Department cannot advise a project on whether or not they need an EIC Determination to move forward with an individual or sole proprietor. If a project is unsure if they need an RCUH HR EIC review, then they should consult with their Fiscal Administrator or RCUH Procurement to ensure compliance with UH and RCUH administrative fiscal policies and requirements.

Questions? Please contact: RCUH Human Resources at email: rcuhhr@rcuh.com or (808) 956-7055.