Part-Time Instructor: Employee or Independent Contractor?

August 23, 2018

Instruction is a basic and fundamental component of the mission of the U of Minnesota (U), with the U exercising significant direction and control over classes offered at the U. There are numerous Internal Revenue Service rulings and related guidance concluding that higher education institutions retain a sufficient degree of control over instructors to establish an employer/employee relationship. Consequently, individuals hired to provide instruction, even on a part-time basis, generally must be hired as employees, with limited exceptions as described on page two.

General Rule: Hire Part-Time Instructors as Employees
Hire part-time instructors as employees if 1, or 2, or 3, or 4 below are met:

1. The individual is currently on the U payroll and is hired to instruct any U class.
   - The class may be an academic credit class or a not-for-credit class.
   - The payment to the part-time instructor must be made through payroll because the instructor is already being paid as an employee and instructing is a core business of the U.

2. The individual is a primary instructor of an academic credit class.
   - A primary instructor is the instructor named by the U to have control over the class. The U retains control of the academic credit class through an employment relationship.

3. The U determines the content of the class.
   - When the U retains control over the content of a class, it demands a relationship that allows for directing the instructor’s actions. This control over content requires an employment relationship.
   - Conversely, an employment relationship is not required when a part-time instructor controls the course content of a class.

4. A guest instructor presents more than a few lectures for an academic credit class.
   - Even if the guest instructor is not the primary instructor, if the individual is lecturing for more than a few lectures of an academic credit class, the control the U will retain over the class and the guest instructor requires that the guest instructor be hired as an employee.

In this TMOG, “academic credit class” means a U offering that awards credit leading to a postsecondary degree or other recognized postsecondary educational credential. Classes such as continuing professional education classes or personal enrichment classes not awarded credits toward a postsecondary degree or credential are not academic credit classes. Classes that issue the following are not academic credit classes: Continuing Education Units (CEU), Continuing Professional Education (CPE) credits, Continuing Medical Education (CME) credits, Professional Development Units (PDU), or Professional Development Hours (PDH).
Exceptions to Above Rule: Do Not Hire as Employees

There are limited exceptions to the general rule that part-time instructors should be hired as employees.

1. Guest Instructor

When the U engages a non-employee guest instructor with expertise in a particular field to present one, or a few, lecture(s) for the U, the guest instructor may be treated as an independent contractor. A guest instructor is not otherwise an employee, is not a primary instructor of an academic credit class and does not have ongoing teaching duties. The guest instructor is not hired as a substitute for a regular instructor, but is engaged for his or her expertise on a particular topic. Although the U is responsible for including the topic in the course design, the guest instructor determines the actual content of the presentation. A guest instructor has no ongoing responsibilities for the students, such as grading. A guest instructor that instructs for more than a few lectures of an academic credit class must be hired as an employee.

2. Content for Class Controlled by Part-Time Instructor

If the U works with a part-time instructor to identify a general topic of interest and hires the part-time instructor to develop the content for a not-for-credit class offered to the general public, the U is not retaining control over the content of the class and the part-time instructor may be hired as an independent contractor. This exception only applies when the part-time instructor is not currently on the U payroll.

3. Part-Time Instructor’s Employer Prohibits Outside Income

When a part-time instructor is employed by a third-party entity that does not allow its employees to receive outside income it may be possible to hire the entity itself to provide the instructional services. For example, an attorney works for a law firm that prohibits employees from earning income other than through the law firm. The U wants a part-time instructor with specific legal experience to be the primary instructor for a specialized class offered to U students. In this situation, the U could hire the law firm to provide the teaching services. A Contract for Professional Services would be entered into with the law firm. The law firm would provide an employee, or employees, with the desired experience to fulfill the agreed upon instruction and the U would pay the law firm for the services. This exception does not apply when the law firm is a sole proprietorship or an LLC that is treated as a disregarded entity. In those cases, since the instructor is able to change the restriction relating to outside income, the individual should be hired as an employee.

4. Hiring an Educational Company to Provide Instruction

There are companies that develop class materials and offer to present classes for other entities. The companies are in the education business. If the U hires an outside company to develop and teach a class, the U is not hiring the individual that presents the class, but rather is hiring the company. The contract is between the company and the U and the company is listed as the instructor. In this scenario, the U may hire the company to provide individuals to instruct; the U will not hire the individuals as employees. This exception may not apply if the company is a sole proprietorship and the sole proprietor is the individual performing teaching services.