

System-wide Policy: FI0540 - Independent Contractors	
Version: 3	Effective Date: 03/03/2020

FI0540 – Independent Contractors

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Objective:

To ensure compliance with applicable rules and regulations of the Internal Revenue Service (IRS) and other governmental agencies related to the proper classification of an individual providing services to the University.

Policy:

General Policy

1. Proper determination and classification of an individual as either an employee or independent contractor is critical for a number of reasons. The misclassification of employees as independent contractors can result in the university being held liable for the worker’s employment taxes. The IRS can also assess significant penalties. Where an individual is classified as an employee, the university must withhold income and FICA/Medicare taxes and match the employee’s share of FICA/Medicare taxes. In addition, other obligations such as annual leave, sick leave, workers’ compensation benefits, health insurance and retirement plan contributions may be incurred by the university on behalf of employees. Violation of employment eligibility verification rules

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(Form I-9) may also occur when a worker is inaccurately classified as an independent contractor rather than an employee. Conversely, if the worker is correctly classified as an independent contractor (IC), the university has no obligation to withhold income or FICA taxes but must report payments of \$600 or more per calendar year on IRS Form 1099-MISC.

A questionnaire is provided within this policy to assist departments in making the correct classification. Individuals providing services who are not acting as independent contractors should be placed on the university's payroll as employees.

Definitions

2. **Employee:** An individual in an employment situation in which the employer has the right to control and direct the individual with regard to the end result as well as the process by which the end result is accomplished.
3. **Independent contractor:** Independent contractors are individuals or firms that (1) are engaged to perform specific services for a stated fee or contracted amount, (2) may provide services to the public, and (3) are subject to university control only as to the end results, and not the methods of obtaining them. An independent contractor typically has a separate workplace, is not supervised, and has a particular, often specialized, set of skills. The University does not routinely enter into written agreements with employees, but regularly enters into contracts with independent contractors.

Determining the Correct Classification

4. Several factors must be weighed to determine the proper classification of an individual. The university's degree of control and the degree of independence must be considered. Past IRS rulings have classified this information into three main categories that are discussed below.
 - A. **Behavioral Control** - These factors assess the extent to which the university has a right to direct or control how the worker does the work. A worker may be an employee when the University has the right to direct and control the work.

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Please note that the key factor is the right to direct or control the way the work is done, not whether the university actually directs or controls the work. For example:

- **Instructions** – if the worker receives extensive instructions on how the work is to be done, this suggests employee status. Instructions can cover a wide range of topics, such as:
 - how, when, or where to do the work
 - what tools or equipment to use
 - what assistants to hire to help with the work
 - where to purchase supplies and services

If a worker receives limited instruction about what should be done and minimal instruction as to how it should be done, the worker may be an independent contractor. Instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the University provides a worker with training about required procedures and methods, this indicates the worker may be an employee.
 - **Evaluation** – if the University puts evaluation systems in place to measure the detail of how the work is done, this indicates the worker may be an employee.
- B. **Financial Control** - These factors assess whether there is a right to direct or control the business part of the work. For example:
- **Significant Investment** – generally, an independent contractor makes a significant investment in the business. While there is no precise dollar test, the investment must have substance. A significant investment, however, is not necessary to be an independent contractor.
 - **Expenses** – independent contractors are generally not reimbursed for some or all of their business expenses.
 - **Opportunity for Profit or Loss** – independent contractors generally realize a profit or incur a loss while employees typically get paid

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regardless of the outcome. The opportunity for profit or loss suggests that the individual is in business as an independent contractor.

- **Services Available to the Market** – independent contractors are generally free to seek business opportunities outside the university.
- **Method of Payment** – an employee is generally guaranteed a regular wage (hourly, weekly or other period of time). Independent contractors are most often paid for the job by a flat fee.

C. **Relationship of the Parties** - These factors relate to how the university and the worker perceive their relationship. For example:

- **Employee Benefits** – if the worker requests or receives benefits, such as insurance, retirement, or paid leave, this is an indicator of employee status.
- **Written Contracts** – a written contract may state the intention and define the relationship of the worker and the university.
- **Permanency of Relationship** – an expectation that the relationship continues indefinitely, rather than for a specific project or period, generally indicates employee status.

[Time-Line for Determining the Correct Classification](#)

5. The determination of an individual’s status as an employee or an independent contractor must be determined **prior to** an engagement to perform services to ensure proper compliance with tax withholding, benefits policies and employment eligibility verification (I-9) requirements.

[Completing the Worker Classification Questionnaire](#)

6. A “[Worker Classification Questionnaire](#)” is available to assist departments in correctly classifying individuals.

If the questionnaire indicates “treat as an employee,”, payments to this individual must be processed through payroll. The department should contact their campus payroll office for guidance on processing the payment. The department will still be

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required to follow applicable Human Resource policies and search processes before an individual can be hired.

If any boxes are checked that indicate the individual should be treated as an independent contractor, the form should be retained in case the System Accounts Payable Office has any questions regarding information provided by the vendor.

Independent Contractor Services

7. The university has identified the following non-exhaustive list of examples of services as being generally performed by independent contractors. Payments to independent contractors should be made through the appropriate accounts payable process and not through the payroll process.
 - Accreditation evaluation services
 - Athletic game officials, University Interscholastic League judges and assistants
 - Court reporters
 - Financial and legal services provided by individuals who perform these services for the general public
 - Guest speakers, artists, performers and professional models
 - Medical services provided by individuals who perform services for the general public (except for certain health care clinics in which the University provides such services directly to the public)
 - Non-UT student support costs in a research experience program (REU's)
 - Participants at UT-sponsored workshops
 - Photography or graphic services
 - Prizes/contest award (if payment to a UT student, approval from financial aid must be provided)
 - Provides goods/products only
 - Rental services – facilities and equipment
 - Research participants
 - Royalties
 - Tuning/adjustment of university musical instruments

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Services Performed By University Employees

8. Employees of the university do not qualify as independent contractors, and payments to university employees should be processed through payroll unless they are royalty payments or payments for participation in a clinical trial study or an exception has been granted by the System Accounts Payable Office. Employees are reminded that they must comply with the University's [FI0125 - Conflict of Interests \[Replaced by GE0002\]](#) policy. If an employee is providing services outside of their regular university job duties, payment should be processed through the university payroll process either as overtime pay or as supplemental pay in accordance with human resource policies.

Services Performed By University Students

9. Generally, students are not hired as independent contractors. To qualify as an independent contractor, the student's work relationship must be consistent with the qualifications mentioned above, and the department must have completed the questionnaire. Examples of student workers who may qualify as an independent contractor are disc jockeys and other performers who have a bona fide business, provided they provide the same service to others, have their own equipment, etc.

Non-Credit Instructors

10. The Institutes for Public Service and Agriculture and others frequently hire temporary instructors, and the following guidelines have been developed to assist them in determining if these workers qualify as an employee or an independent contractor.
 - A. University faculty and individuals retained to teach an entire class **for credit** where they are responsible for awarding a grade must be paid as an employee through the payroll process, irrespective of the length of the course or program or whether the course or program is within their normal area of responsibility. Non-credit instructors without a faculty appointment may be retained as independent contractors to provide such services pursuant to B. and C. below.

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- B. Individuals who are not employees and who are retained to provide the following temporary services in connection with **non-credit** courses should be treated as independent contractors:
1. A person who is to participate as a guest lecturer on one or more occasions.
 2. A person who is to participate on one or more occasions as a panelist or workshop participant.
 3. An instructor retained to teach a course or courses of short duration, provided that the total number of days that the person teaches does not exceed 5 calendar days in one calendar year. Each day devoted to teaching counts as one calendar day regardless of the number of teaching hours worked in any of those days. The instructor must provide his or her own teaching materials.
- C. An instructor, who is not an employee and who is retained to teach a **non-credit** course of longer duration than that specified in B.3. above, may be retained as an independent contractor only if he or she is either (i) a bona fide employee of a company or organization that provides similar teaching services to others, or (ii) operating an independent business that provides similar teaching services to others. In determining whether the individual is operating an independent business, the following factors should be considered:
1. Does the individual provide more than de minimis services to other clients?
 2. Does the individual appear to be operating a bona fide business (e.g., is the individual incorporated or does he or she have a taxpayer identification number, business license, business letterhead, a separate business location, etc.)?
 3. Does the individual receive payment based on a flat fee for services performed, as opposed to being paid on an hourly basis?
 4. Does the individual advertise his or her services?

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Processing Payments for Services

11. The university's terms and conditions for awards through purchasing or the contract process should contain the following language:

INDEPENDENT CONTRACTOR - It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The Contractor, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The University shall have no liability except as specifically provided in this Contract.

FOR MORE INFORMATION:

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Forms

- [Worker Classification Questionnaire](#)