THE UNIVERSITY OF TENNESSEE

System-wide Policy: Procedure for Fiscal Policy FI0405: Procurement - Independent Contractor Procedures	
Version: 1	**Effective Date: 03/05/2024**

Objective

This procedure specifies basic practices related to determining whether an individual will be classified properly as an independent contractor or as an employee.

Scope

This procedure applies to all University employees.

Procedure

I. **Generally**

A. Determining whether an individual is an independent contractor or employee is a critical task.

B. The need to evaluate whether an individual is an employee or an independent contractor only needs to occur when the University seeks to transact with an individual person and the individual person will provide services or a combination of goods and services. When the University seeks to engage with a corporation, corporations are always independent contractors. When the University seeks to purchase only goods from an individual, the individual is an independent contractor.

C. The University must determine whether an individual is an employee or an independent contractor **before** engaging the individual to perform services.

D. The University maintains the Worker Classification Questionnaire to assist departments with determining an individual's correct status as either an employee or independent contractor.

E. The University's departments will pay independent contractors through the applicable accounts payable office.

II. **Factors to consider**

A. The Internal Revenue Service (IRS) is the primary government authority that determines whether an individual's proper classification is as an employee or as an independent contractor. The IRS has established three main categories to consider when determining whether an individual's proper classification is as an independent contractor or as an employee.

1. Behavioral control: The IRS considers behavioral control, which are facts that show whether the University has a right to direct or control how the individual performs the work.

a) Type of instruction/control: An individual is an employee when the University has the right to direct and control the individual.

b) Degree of instruction: if the University will provide the individual with extensive instructions on how the work is to be done, the individual's proper classification is most likely as an employee. Instructions can cover a wide range of topics, including, but not limited to:
   - 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.

c) If the University will provide limited instructions about what the individual will do and limited instructions on how the individual will complete the work, the individual might be an independent contractor. For purposes of determining whether an individual is an independent contractor or an employee, instructions about time and place might be less important than directions on how the individual is to perform the work.
   - Training: if the University will provide the individual with training about required procedures and methods, the individual is likely an employee.
   - Evaluation: if the University utilizes evaluation systems to measure how the individual performs the work, the individual is likely an employee.

2. Financial control: The IRS considers financial control, which are facts that show whether the University has a right to direct or control the business part of the individual's work.
   a) Significant investment: If the individual has a significant investment in their work, the individual might be an independent contractor. The IRS has not set a specific dollar threshold for this factor.
   b) Non-reimbursed Expenses: If the University will not reimburse the individual for some or all of the individual's business expenses, the individual is likely an independent contractor, especially if the individual's non-reimbursed business expenses are high (the IRS has not set a specific percentage or dollar threshold for evaluating whether expenses are "high").
   c) Opportunity for profit or loss: If the individual can realize a profit or loss, this factor suggests that the individual might be an independent contractor.

d) Services available to the market: If the individual is free to offer their services outside of the University, this factor indicates that the individual might be an independent contractor.
e) Method of payment: An employee is generally guaranteed a regular wage, whereas the University pays independent contractors by the job for a flat fee.

3. Relationship of the parties: The IRS considers the relationship of the parties, which are factors that show how the University and the individual viewed their relationship.
   a) Employee benefits: If the University provides benefits to the individual, such as insurance, retirement, or paid leave, this is an indicator that the individual is an employee.
   b) Written contracts: A written contract (or purchase order) might contain language that indicates the parties' intentions related to how the parties intended their relationship to be treated (employee or independent contractor).
   c) Permanency of the relationship: Generally, the University's relationship with independent contractors has a defined time period. The University's relationship with an employee is indefinite (the time period is not defined).
   d) Services provided as a key activity of the University: If an individual provides services that are part of the University's key activities, such as instructing students, the is more likely that the University will have the right to direct the individual's activities. This factor would indicate that the individual might be an employee.

III. Types of engagements that independent contractors provide: The University has identified the following non-exhaustive list of examples of services as being generally performed by independent contractors.
   A. Accreditation evaluation services
   B. Athletic game officials, University Interscholastic League judges and assistants
   C. Court reporters
   D. Financial and legal services provided by individuals who perform these services for the general public
   E. Guest speakers, artists, performers and professional models

F. 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)
G. Non-UT student support costs in a research experience program (REU's)
H. Participants at UT-sponsored workshops
I. Photography or graphic services
J. Prizes/contest award (if payment to a UT student, approval from financial aid must be provided)
K. Rental services – facilities and equipment
L. Research participants
M. Royalties (royalty payments)
N. Tuning/adjustment of university musical instruments

IV. **Services performed by University employees**:

A. Employees of the University do not qualify as independent contractors, and payments to University employees must 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.
B. 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 must be processed through the University payroll process either as overtime pay or as supplemental pay in accordance with human resource policies.

V. **Services performed by State of Tennessee government employees**: Please see FI0420 – Contracts and its associated Dual Services Procedure. The University must not directly contract with individuals who are employees of another State of Tennessee agency. Rather, the University must contract with the State of Tennessee agency.

VI. **Services performed by University students**: 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.

VII. **Non-Credit Instructors**: 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.

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 VII. 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 must 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?

VIII. **Terms and conditions**: The University's procurement offices and contract-review offices must ensure that they utilize appropriate language in contracts and purchase orders with individuals. The UT System Procurement Office will provide the language in the UT System contract manual.

Penalties/Disciplinary Action for Non-Compliance

Failure to comply with this procedure could result in disciplinary action, up to and including termination. Improperly classifying an individual as an independent contractor when the appropriate classification is as an employee could result in fines and other penalties, which the University department transacting with the individual would be responsible for paying.

Responsible Official & Additional Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Andrea Addis	865-974-4421	andrea.addis@tennessee.edu

Related Policies/Guidance Documents

FI0130

FI0315

FI0420

FI0425

FI0445

FI0525

FI0530

FI0620

GE0002