

EMPLOYEES VS INDEPENDENT CONTRACTORS

Since relationships with ICs typically have their origin at the department level, it is essential that departmental staff have an awareness of factors that justify a worker being categorized as an Independent Contractor and make a good faith effort to scrutinize relationships with contractors to determine the true nature of the relationship with the worker.

*Should an IRS audit determine that the university has misclassified workers as contractors when they should have been employees, **severe penalties may be assessed against the university and those penalties will be charged to the appropriate departmental budget string.** The Tax Compliance Officer is available to provide guidance in the determination of the proper worker classification.*

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I. DETERMINING EMPLOYMENT STATUS

The university categorizes workers as either employees or as independent contractors (IC), with the corresponding tax withholding and reporting functions inherent in each category of worker. Categorizing a worker as an IC exposes the university to the greatest amount of risk, since the IRS assumes that all workers are employees unless it can be documented otherwise.

A. Employee

1. Generally, every individual who performs services subject to the will and control of the university as to both what must be done and how it must be done, is an employee. It does not matter that the university allows the employee considerable discretion and freedom of action, as long as the university has the legal right to control both the method and the result of the services.
2. University policy requires that the following workers be compensated as employees:
 - a) Anyone currently employed by the university who performs additional services outside his/her regular job description
 - b) Anyone teaching a credit or noncredit course offered by the university to the public
 - c) Anyone currently enrolled as a university student
3. The status of any worker not falling into one of the above categories must be evaluated based on the IRS common law rules (listed below) for distinguishing between employees and ICs.

B. Independent Contractors (IC)

1. The individual may be an IC if the university has the legal right to control or direct only the results of the work and not the means and methods of accomplishing the result. Generally, ICs hold themselves out in their own names as self-employed and make their services available to the public.
2. Examples of individuals who might meet the criteria for IC status include the following:
 - a) Guest performers or artists who otherwise are not affiliated with the university
 - b) Guest speakers or guest lecturers brought to the university for a very short duration because of their expertise
 - c) Individuals providing professional services, such as accountants, attorneys and other consultants who routinely hold themselves out to the public as providing such services for a fee
3. The term “independent contractor” (IC) encompasses individuals, partnerships, and incorporated or unincorporated companies.

II. INDEPENDENT CONTRACTOR STATUS DETERMINATION AND DOCUMENTATION FORM (ICSDD)

A. Form

1. The ICSDD form is required to determine proper classification of workers as either an independent contractor or an employee.
2. Use of the form is required for engagements with ICs when the *aggregate* compensation to the contractor will equal or exceed \$1,000.00. It is not required for guest performers or artists who otherwise are not affiliated with the university and are using their own contract. If the PSA is over \$10,000.00 it must be reviewed by the university attorney.
3. If the completed ICSDD form does not support IC status, the worker will be hired as an employee and paid through the university payroll system. Contact the Department of Human Resources for further instruction.
4. For assistance in completing the ICSDD form, you may call the Tax Compliance Officer in the Controller's Office at (601) 266-4102. The ***original*** Independent Contractor Status Determination and Documentation form must be submitted with the paperwork to the Tax Compliance Officer to comply with audit requirements.

B. Essential Relationships with Worker Justifying Contractor Status (IRS Common Law Rules)

Failure to meet any of the factors below will generally require that the worker be categorized as an employee and paid through the payroll system. If the worker fails to meet these factors, and in the department's judgment other factors may still support contractor status, forward documentation of this to the Tax Compliance Officer for consideration BEFORE engaging the worker as an IC.

1. *The university does not control, nor does it have the right to control, the details of how or when the work is done. The university only stipulates the end result contracted for with the worker.*
2. *The worker offers similar services to the public.*
3. *The worker is not a university employee, nor has the worker been a university employee within the **last twelve calendar months** just preceding the start of this contractual relationship. If the worker is doing business under a business name, none of the principals of the company are university employees.*
4. *Neither the university nor the worker has the right to terminate the relationship without violating contractual obligations and incurring the risk of consequent penalty.*
5. *By fulfilling the agreement, the worker has the opportunity for either a financial profit or a loss.*
6. *The work performed by the worker is not integral to the functioning of the university.*
7. *The relationship between the university and the worker is limited in duration. (Back-to-back, recurring contracts could be considered to be a continuing relationship).*

For clarification on any of the preceding rules, contact the Tax Compliance Officer in the Controller's Office at (601) 266-4102.

III. INDEPENDENT CONTRACTOR PROFESSIONAL PERSONAL SERVICES AGREEMENT (PSA)

A. Form

The **original** Professional Personal Service Agreement (PSA) must be submitted to the Tax Compliance Officer to comply with audit requirements

B. Purpose

1. The agreement formalizes and documents IC relationships with the University.
2. The agreement must be completed for all ICs who are being paid \$1000.00 or more for the total agreement excluding documented travel expenses.
3. Agreements **are not required** for the following:
 - a) Payments to research subjects or simulated patients. Simulated patients with long term assignments should be paid as employees.
 - b) **Payments charged against Restricted Accounts, when a Request for Service of an Internal Consultant has been executed acceptable to the Sponsored Programs Administration and retained in that office. This exception is available at the discretion of Sponsored Programs Administration only.**
 - c) Payments classified as stipends. "Stipends" are "fixed and regular payments" and may be issued for services rendered or for participation in some type of organized research study. If the individual renders a service in exchange for payment, then the worker should be classified as an employee and paid through the payroll system. If the stipend is a payment for participation in a research project, complete a Remittance Voucher.
 - d) Payments classified as Honorarium. "Honorariums" are "gratuitous payments given to professional persons for services for which fees are not legally or traditionally required and no invoice is presented for payment."

C. Restrictions

- A. According to Miss. Code Annotated 25-4-101 and 25-4-105 (1), payments to ICs cannot be made when a conflict of interest exists:

The legislature declares that elective and public office and employment is a public trust and any effort to realize personal gain through official conduct, other than as provided by law, or as a natural consequence of the employment or position, is a violation of that trust. Therefore, public servants shall endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of this trust and which will not reflect unfavorably upon the state and local government.

No public servant shall use his official position to obtain pecuniary benefit for himself other than that compensation provided for by law, or to obtain pecuniary benefit for any relative or any business with which he is associated.

- B. The PSA form should not be used for any work-related alterations, renovations or construction of facilities. The Physical Plant should be contacted for guidance in these matters.
- C. Partial payments totaling more than the original agreement should not be processed for payment without a revision to the agreement authorized by the department and the contractor.

D. Preparation, Processing, and Routing

1. The agreement must be completed by the initiating department.
2. Only one person or company can be paid on a single agreement and all applicable sections of the agreement must be completed.
3. The agreement must be routed in the following order for acceptance and signature to the following:
 - a) The independent contractor
 - b) An expenditure authority on the account being charged
 - c) The Tax Compliance Officer
 - d) Sponsored Programs Administration, if a restricted account (contract or grant) will be charged
 - e) The dean or vice president (or designee within the dean's/vice president's office) for services contracts between \$5,000 and \$10,000
 - f) University Legal Counsel for review if they are using their own contract or if the amount of the PSA is over \$10,000.00
 - g) Purchasing Department

The department should retain copies of the ICSDD, PSA, and any pertinent documentation sent to the Tax Compliance Officer.

4. At the completion of the services, an invoice must be sent to Accounts Payable referencing the PO number, approval for payment and reference if this is a final payment.

When a partial payment is made against a PSA, the invoice must reference that it is a partial payment, the PO number and the approval for payment.

IV. PAYMENT PROCESSING

- A. Before services begin, the original ICSDD, the original PSA with the requisition number referenced at the top of the page, and any other pertinent documentation must be sent to Purchasing, Box 5003, to create a Purchase Order.
- B. A completed, signed, original W-9 form must be on file for the payee. Payment processing will be delayed until a completed W-9 form is received by Procurement. A sole proprietor's individual name must always be provided in addition to a business name. If the University engages a company as an IC, incorporated status must be designated on the Independent Contractor Status Determination and Documentation Form. If designation is not provided, the University will assume sole proprietorship and will require that a name and Social Security number be provided. A W9 form may be obtained by visiting the Procurement Web site at <http://www.usm.edu/procurement/apforms.html> or the IRS Web site at http://www.irs.ustreas.gov/basic/forms_pubs/forms.html.
- C. Documentation on the Requisition should include a full description and the dates of the services rendered and/or products provided.
- D. Invoices for payment -
 - 1. For all agreements an invoice is required. For agreements with partial payments, invoices are required for all individual payments.
 - 2. The contractor/consultant must sign all invoices.
- E. Original receipts and tickets for travel expenses should not be provided. Any portion of the payment to the IC that is designated as reimbursement for travel expenses is included in the amount reported to the IRS on Form 1099-MISC. The original receipts for these expenses should be used when the IC prepares his or her own tax return. Travel reimbursements will be more likely to signify an employer-employee relationship.
- F. At the completion of the services, an invoice must be sent to Accounts Payable referencing the PO number, approval for payment and reference that this is a final payment.

When a partial payment is made against a PSA, the invoice must reference that it is a partial payment, the PO number and the approval for payment.

V. NONRESIDENT ALIEN INDEPENDENT CONTRACTORS

- A. International Student & Scholar Services (ISSS) (6-4841) must be notified of ALL incoming nonresident alien Independent Contractors (ICs) before those individuals arrive on campus. This is a requirement for nonresident alien individuals, partnerships, and corporations. ISSS will send a letter to the individual informing him/her of the necessary steps to take before and after arriving in the United States. This letter will also explain that it may not be possible for the individual to receive a check while he/she is on campus, especially if the visit is for a short time period and the individual does not have a Social Security number or an individual tax identification number (ITIN). The Administrator of ISSS is authorized to submit applications for ITINs, if an individual does not already have one. **The University is not legally authorized to pay an IC until a U.S. Social Security number (SSN) or individual taxpayer identification number (ITIN) is provided.**
- B. All nonresident alien ICs must meet with ISSS upon arrival on campus. It is a good idea for the hiring department to schedule an appointment with ISSS before the individual arrives on campus. The nonresident alien IC should complete the Foreign National Information Form, which will be mailed to him/her with the letter from ISSS. This form can also be obtained from ISSS or from the Tax Compliance Officer in the Controller's Office. The individual should bring the completed Foreign National Information Form along with Form I-20, SSN or ITIN, visa, I-94 card and passport documents to the meeting with ISSS. ISSS will ensure that the nonresident alien IC has the proper immigration status to permit him/her to be paid.
- C. Departments should also discuss the engagement of nonresident alien ICs with the Tax Compliance Officer before employing them in order to know the tax consequences of the work engagement. Unless exempted by a current tax treaty with an individual IC's country of citizenship, payments for services rendered by the IC are subject to federal income tax withholding of 30%.
- D. If the payment is determined to be exempt from withholding, a check will be issued for the gross invoice amount. A purchase order is required if over \$1,000 whereas a remittance voucher is permissible if under \$1,000.
- E. If the payment is determined not to be exempt from withholding, a check will be issued for the net amount of the Purchase Order (if over \$1,000) or Remittance Voucher (if under \$1,000) after deducting taxes. Departmental accounts will be charged for the gross amount. The Tax Compliance Officer will prepare the appropriate paperwork to charge the departments for the difference between the gross amount due to the IC and the net check. The taxes withheld will be deposited with the IRS.