



# Independent Contractor Policy

Effective Date: December 2018

Office: Human Resources; Office of General Counsel

**PURPOSE:** When hiring individuals as consultants/independent contractors, the University's designation of independent contractor status is governed by the IRS tax code and common law. Significant penalties exist for incorrect classification of an employee as an independent contractor. The IRS tests that determine whether a worker is an independent contractor examine the employer's degree of control over the independent contractor through behavioral, financial and relationship criteria. Federal law requires employers to withhold income taxes from employees' paychecks and pay a matching amount of Social Security, Medicare, and unemployment taxes for all regular employees. In contrast, independent contractors are responsible for paying any taxes due on monies earned for professional services they render. Therefore, it is imperative that the University apply common standards in classification of workers and contracting and that each instance be documented and auditable.

## REFERENCE DOCUMENTS/ RELATED INFORMATION:

*List any other policies or information that should be cross referenced.*

[Independent Contractor Checklist](#)

[1099 Form](#)

[Professional Services Agreement](#)

## SCOPE: *Who is affected by this policy or needs to read it?*

All employees, including student employees, consultants, and contractors, including but not limited to guest performers, artists, lecturers, etc. who are paid an honorarium.

This policy does not apply to individuals who are employed by a staffing company or an outside vendor to provide services to the University.

**Definition of Outside Vendor:** Consulting firm, LLC, etc. Any firm that has a separate tax ID number is an outside vendor. If a consultant needs to use his or her individual SS# as a tax ID, then he or she is an independent contractor.

**POLICY HISTORY:** *Include any information about previous versions or whether this replaces an existing policy.*

This is a new policy.

**POLICY STATEMENT:** *State the policy here. The policy statement should include the principles of the policy: what is permitted or prohibited, what is required, or how issues will be handled. If viewers read only this section, they will know what the policy is and how it extends to the University. How-to procedures can be elaborated on in the Procedures section.*

## **POLICY STATEMENT AND PROCEDURES:**

This policy applies to any University of Indianapolis department or business unit that contracts with an individual or an entity for supplemental services to be paid by the University, regardless of the source of funds. A department or business unit intending to engage a vendor or other service provider as a consultant or independent contractor must follow University contracting and approval procedures prior to the start of any work or performance of services.

A professional services agreement is a contract. Changing the terms and conditions of an existing contract requires the completion of an amendment to the University's standard Professional Services Agreement form or other form as may be negotiated by the parties. Please contact the Office of General Counsel for assistance with Professional Service Agreements and amendments.

Prior to completing any type of contract with an individual who will be providing professional services to the University, managers must complete an Independent Contractor Checklist. This Checklist will assist in determining whether or not the provider of professional services is an employee of the University or an independent contractor. Please note that an individual shall not have employment status and independent contractor status at the same time. Frequently used vendors or independent contractors performing the same work do not need to have checklist completed each time they are engaged.

Professional services provided by an independent contractor may include, but not be limited to, consulting services, contracting services, services of licensed professionals, and services provided by guest performers, artists, and/or lecturers who will be paid an honorarium in exchange for performing, offering a master class, directing a workshop, or offering similar services, granting rights or permission to intellectual property in exchange for payment of fees by the University, and participation in surveys or studies or in human research projects.

The tax laws on worker classification apply to all service providers, regardless of University funding source or procurement method.

### **Services Provided by Current and Former University Employees**

If the service provider you wish to engage is a current University employee, a former employee (paid through University payroll during the current calendar year) or is providing a service the same as or similar to that of a current employee, he or she will be paid as an employee and not as an independent contractor.

It is the University's policy that any student engaged to provide services of any kind for any purpose on campus shall be considered to be a student employee and shall be paid through student payroll.

It is important to check with Human Resources to determine if a service provider is an employee.

### **Determination of Independent Contractor Status**

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Tests for determining whether a service provider is an independent contractor or an employee include, but are not limited to, the following considerations:

- **Behavioral control:** An independent contractor determines when, where and how to work. The independent contractor provides his or her own tools, including computer workspace and administrative support. Additional staff needed to work on an assignment is hired and paid by the independent contractor.
- **Financial control:** Independent contractors experience different financial rewards and constraints than employees and have the opportunity to make a profit or loss.
- **Type of relationship:** An independent contractor is responsible for his or her own work benefits, professional licenses and insurance.

## Responsibilities of All University Personnel Overseeing Services Provided by Independent Contractors

- Avoid providing work schedules to the independent contractor. Independent contractors set their own work hours and schedules, and may agree to specific deadlines requested by the University for delivery of work product. However, Independent Contractors can be asked to be present at a set event or training session for which he or she is being hired.
- Refrain from training the independent contractor on methods of work. Independent contractors determine the means and methods of the work they are engaged to perform for the University.
- Adhere to the written agreement or contract when considering expense reimbursement to an independent contractor and when paying the independent contractor for services rendered. The independent contractor's professional services agreement will detail any reimbursement for travel or other expenses incurred in addition to the fee arrangement for services performed by the independent contractor (hourly rate, flat fee, not-to-exceed contract cap, etc.).

## Residency Status:

It is important to note that the University will need to find out if the independent contractor is a US Citizen, Permanent Resident, or non US Citizen. Additional information is required for Permanent Residents and non US Citizens.

- **Permanent Residents** -- Permanent Residents are issued a "Green Card," which shows the dates of permanent residency.
- **Non US Citizens** -- The additional information needed for Non U.S. Citizens depends upon the location of the services. Services rendered inside the United States (U.S.) have additional immigration and tax reporting requirements than services that are rendered outside the U.S. Non-U.S. citizen payments will not be processed without prior approval.
- **Services inside the United States** -- Independent Contractor payments, including expense reimbursements, can only be received by non US Citizens whose visa status allows the receipt of such payments. Further, the tax reporting requirements depend upon the visa type, the country of tax residence, the number of tax years in the United States on a F, J, Q or O VISA and whether the individual has a U.S. Social Security or Individual Tax Identification Number.
- **Services outside the United States** -- Independent Contractor payments for services outside of the United States require evidence of the services being rendered outside of the U.S. and documentation of the

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## Sample Scenarios

**Example #1:** A student is hired by the Athletics Department to keep time for a day-long tournament.  
*Is the student an employee or an independent contractor?*

**Answer:** The student is an employee of the University and must be paid through student payroll.

**Example #2:** An academic department hires an adjunct faculty member.  
*Is the adjunct an employee or an independent contractor?*

**Answer:** The adjunct faculty member is an employee and must be paid through regular employee payroll.

**Example #3:** A faculty member works full time for the University and has a private consulting business on the side. The University asks the faculty member to provide professional services outside of the faculty member's regular instructional duties.  
*Is the faculty member an employee or an independent contractor?*

**Answer:** The faculty member is an employee of the University and must be paid through regular employee payroll. However, the employee may be paid at a higher rate for these additional services consistent with the rate the employee would ordinarily charge for providing services through his/her private consulting business.

**ADDITIONAL CONTACTS:**