

Guidelines and Procedures

Employee/Employer Relationships vs. Independent Contractors

I. Guidelines:

Appropriate categorizing of individuals performing services to the College is essential to avoid incurring substantial tax penalties and other liabilities. Decisions concerning the appropriate category will be made by Human Resources, in consultation with legal counsel as needed. **APPROVAL MUST BE SECURED PRIOR TO COMMENCEMENT OF SERVICES.**

Employee: An individual performing services for the College is to be regarded as a College employee, whether the service is full-time or part-time, regular or temporary, unless it is clearly demonstrated that the relationship is that of a true independent contractor. An individual will be considered and treated as an employee if others in the same or substantially similar positions are employees.

Independent Contractor: A person acts as an independent contractor if the College directs and controls only the intended results and not the means and methods of accomplishing it. Doubtful cases of interpretation are to be resolved in favor of categorizing the individual as an employee. Specific cases will be decided on particular facts, but the following guidelines are instructive.

- A. Independent contractors generally have other clients and derive a substantial part of their income from sources outside the College.
- B. The work of independent contractors is uniquely skilled or professional in nature and requires a considerable amount of independent judgment and specialized knowledge or training obtained elsewhere. Secretarial or clerical services will generally be regarded as being provided by employees.
- C. The place where the work is performed is one indicator, but not determinative. Employees are usually paid for work performed on-site, while independent contractors can work on-site or at home or other locations off-site.
- D. The substance of the relationship is important, not what it is called. Use of a business name is not determinative.
- E. Current employees who perform services for the College different from their regular job will generally remain in an employer/employee relationship and will be paid through extra compensation such as an overload/stipend (exempt) or for all hours worked if hourly-paid (non-exempt). Former employees will be hired back as full-time, part-time or temporary employees.

II. Procedures:

- A. All actions necessary to engage an individual as a contractor or to hire as an employee must be approved prior to offer and commencement of services. Allow time for sign-off and posting requirements. Offers extended without approval of Human Resources may be rescinded and payments will be delayed.
- B. Provide tentative service provider with the 20 Factor test, 20 factor test definitions and the Independent contractor questionnaire form. HR will review completed forms to determine if the service provider falls under the independent contractor classification or an employee classification. If the service provider falls under an employee classification, it will be necessary to create a position number and a job description if it doesn't already exist, as well as a contract or rate sheet for payroll processing. Submit the Checklist and Questionnaire to Human Resources for review and approval.
- C. Submit the 20 Factor test and Questionnaire to Human Resources via HR SharePoint site for review and approval.