

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: TAX CLASSIFICATION: INDEPENDENT CONTRACTOR
VERSUS EMPLOYEE

NUMBER: 262

AUTHORIZING BODY: VICE PRESIDENT FOR FINANCE AND ADMINISTRATION

RESPONSIBLE OFFICE: CONTROLLER'S OFFICE

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RATIONALE: The policy and supporting procedures provide guidelines to properly classify persons providing services to the University as either an Employee or as an Independent Contractor.

The determination of whether a person is an Employee or an Independent Contractor is based on common law principles that have been incorporated into Internal Revenue Service (IRS) regulations, and depends on the analysis of many different factors. No one factor is decisive, not all factors apply in every case, sometimes factors generally applicable to an Independent Contractor may apply to an Employee and vice versa, and each factor is not accorded the same weight. Ultimately, the determination is based on the facts of each particular case.

Despite the absence of a simple IRS rule, the proper determination of the status of a person as an Employee or as an Independent Contractor is of serious consequence to the University. If the University erroneously classifies an Employee as an Independent Contractor and has no reasonable basis for doing so, the University can be liable for income, social security and Medicare tax withholding payments, plus interest and penalties.

POLICY: The University classifies persons providing services to the University as either Employees or Independent Contractors by properly applying IRS guidelines.

SCOPE AND APPLICABILITY: All University Departments must initiate the process to properly classify persons providing services to the Department.



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DEFINITIONS:

Employee: Any individual who merits the classification of an Employee after applying the IRS guidelines provided in this policy. The University controls and directs the Employee's activities. Employees are paid via the payroll process and receive IRS Form W-2's.

Independent Contractor: An individual who makes their services available to the general public and who meets the classification of an Independent Contractor after applying the IRS guidelines provided in this policy. The service provider is not supervised or controlled by Oakland University Employees. Independent Contractors are paid via Accounts Payable and may receive IRS Form 1099's from which no taxes are withheld.

PROCEDURES:

Employees: When hiring an Employee, the Department is required to follow the University's standard hiring processes administered by the Academic Human Resources and University Human Resources Departments, respectively. A Classification Request is not required when hiring an employee.

Independent Contractors: Departments cannot hire individuals as Independent Contractors if they are a current University Employee. When hiring an Independent Contractor, the Department must submit a completed Classification Request to the tax compliance section of the Controller's Office and receive approval from the Controller's Office before entering into an Independent Contractor agreement with the person. The approved Classification Request must also be attached to the original contract when first submitted for payment. The fees paid to an Independent Contractor must be appropriate for the type of services rendered.

Do not use the Classification Request for services from a corporation or partnership that uses an Employer Identification Number (EIN) for tax purposes. The Classification Request is only required for payment to individuals and sole proprietors.

Any questions about the appropriate classification of persons providing services to the Department as either an Employee or an Independent Contractor should be directed to the tax compliance section of the Controller's Office before the services of the person are retained.

IRS Guidelines for Determining Who is an Employee and Who is an Independent

Contractor: The IRS considers three primary categories of evidence when determining whether a person is an Employee or an Independent Contractor: behavior control, financial control and the relationship of the parties. The factors considered in each category are only guidelines, and all relevant factors should be considered.

1. **Behavior Control.** Generally, an Employer-Employee relationship exists when the University controls the manner in which the work is done. Typical facts that illustrate University behavior control are:

- The University trains the person to perform the work in a particular manner;
- The University instructs the person about when, where and how to work;
- The person cannot hire, supervise or pay assistants to do the work the person was hired to do for the University;
- The University sets the hours and the days of the week the person must work (e.g., a particular shift or from 8:00 a.m. to 5:00 p.m.);
- The University requires the person to perform the work in a particular order or sequence;
- The University furnishes the significant tools, equipment and other materials for the person to perform the work.

Generally, an Independent Contractor relationship exists when the person controls the manner in which the work is done. Typical facts that illustrate Independent Contractor behavior are when the person:

- Receives no training from the University;
- Is retained to provide a specific service, but how they provide that service is within their own discretion;
- Can hire, supervise and pay their own assistants to do the work;
- Sets their own work hours and the days of the week they will perform the services.

2. **Financial Control.** Generally, an Employer-Employee relationship exists when the University controls the financial aspects of the person's work. Typical facts that illustrate University financial control are:

- The person works only for the University;
- The person is paid by the hour, week or month and may receive University paid fringe benefits (e.g., health insurance, retirement and University paid vacation, etc.);
- The person's business expenses are paid by the University (see [OU AP&P #207 Business Expenditures](#) or [#1200 Travel](#)).

Generally, an Independent Contractor relationship exists when the person controls the financial aspects of their own work. Typical facts that illustrate Independent Contractor behavior are when the person:

- Makes their service available to the general public and can work for the University and other persons or firms at the same time; the person does not work only for the University;
 - Is paid by the job by flat fee or on a straight commission and does not receive University paid fringe benefits;
 - Pays for their own business expenses, (e.g., buying their own tools and equipment, paying their own travel expenses, etc.), and is not subject to the University's Administrative Policies for purchases or expenses;
 - Can earn a profit or suffer a loss from the work done for the University.
3. **Relationship of the Parties.** The relationship of the parties is generally evidenced by examining the parties' agreements and actions with respect to each other, not only how they perceive their own relationship, but also how they represent their relationship to others.

Generally, an Employer-Employee relationship exists when the University engages a person intending that the person will have a continuous, permanent relationship with the University, whether full-time or part-time, such as a faculty or administrative staff member, but who has the right to quit their job without incurring any liability to the University.

Generally, an Independent Contractor relationship exists when the University hires a person by a separate written contract for a temporary assignment, even if the assignment lasts for several years (e.g., external auditor, lobbyist or consultant).

Independent Contractors cannot quit without breaching the contract and being legally obligated to "make good" on the contract.

Example 1: The University hires a computer trainer to perform training services for the University. The person only works for the University; the University pays for the person's training and any certifications they may need; the University tells the person exactly how it wants its trainings performed and how they are to be evaluated; the person must work regular business hours; the person is paid a salary and may receive University paid fringe benefits; can be reimbursed for business expenses according to the University's Administrative Policies; the University provides the person with a computer and any materials the person needs to perform their job; and, the person can quit their job and leave the University whenever they want without any liability. This person is an Employee.

Example 2: The University engages a computer trainer to perform training services for the University. The person advertises their services on their own website and works for the

University, but also has many other clients; pays for their own training and any certifications they may need; performs the training as they deem appropriate and will deliver industry standard certificates of completion to the trainees; can work whatever hours they want and on whatever days of the week they want; can hire, supervise and pay their own assistants to help them complete the trainings; is paid a flat fee for the services with no fringe benefits; buys their own computers and any materials they need to perform the services without regard to any University Administrative Policies; and cannot quit without finishing the agreed upon trainings without incurring legal liability for breach of contract. This person is an Independent Contractor.

Example 3: The University hires a secretary to work for a Department Head. The person only works for the University; the University pays for the person's training; the person must work regular business hours; is paid a salary and may receive University paid fringe benefits; can be reimbursed for business expenses according to the University's Administrative Policies; the University provides the person with the computer the person needs to perform the work; and, the person can quit their job and leave the University whenever they want without any liability. This person is an Employee.

Example 4: The University engages a secretary to work for a Department Head through an employee staffing company. The employee staffing company advertises on its own website that it can provide secretaries on a full-or-part-time-basis; the person works for the University, but the employee staffing company may reassign the person to work for another client; the employee staffing company pays for the person's training; the person must work from 8:00 a.m. until 5:00 p.m. Monday through Friday; the person is paid by the employee staffing company through a written agreement between the employee staffing company and the University and doesn't receive any University paid fringe benefits; cannot be reimbursed for business expenses under the University's Administrative Policies; uses the University's computers to perform the work; and, cannot quit without the employee staffing company incurring legal liability for breach of contract. This person is an Independent Contractor.

RELATED POLICIES AND FORMS:

[OU AP&P #207 Business Expenditures](#)

Refer to [OU AP&P #1000 Procurement Policy](#), for procedures to process payments to individuals determined to be Independent Contractors or Consultants.

[OU AP&P #1200 Travel](#)

APPENDIX:

[Appendix 262.1, University Employee Vs. Independent Contractor Classification Request](#) (ADMNET login required)

Commented [JAL1]: Appendix 262.1 needs to be linked to the EE vs IC Classification Online form at <https://forms.oakland.edu/?deptID=2445>