

## 2319.4 PROCUREMENT AND REPORTING OF INDEPENDENT CONTRACTORS

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**Responsible Office: Purchasing**

**Approval: Purchasing**

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### PURPOSE

The purpose of this document is to outline the policies and procedures related to procuring the services of independent contractors doing business as individuals with the University.

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### ROLES AND RESPONSIBILITIES

#### *Schools and Centers*

- The hiring manager is responsible for ensuring the individual to be engaged has completed the Service Provider Questionnaire and related forms. The hiring manager is responsible, based on the completed Service Provider Questionnaire, for completing the Service Provider Evaluation Worksheet.
- The hiring manager is responsible for sending Purchasing the Service Provider Questionnaire, Service Provider Evaluation Worksheet, and related forms to initiate the supplier set-up process.
- The hiring manager is responsible for ensuring a Purchase Order request is created for all purchases from the independent contractor, including service fees and any business and travel expenses included in the agreement. All payments, including payment for business and travel expenses, are tax reportable to the independent contractor and should be coded as such. As a best practice, business and travel expenses should be included in the fee structure of the independent contractor.
- The business administrator is responsible for receipting independent contractor invoices as required by BEN Financials in accordance to University procurement policies and procedures.
- The hiring manager is responsible for forwarding any independent contractor contracts to Purchasing Services for review and signature.

#### *Human Resources*

- Human Resources is responsible for determining whether the individual should be engaged as an employee, managed through a personnel employment service, or contracted as an independent contractor based on the information provided in the completed Service Provider Questionnaire and Service Provider Evaluation Worksheet.

- Human Resources is responsible for communicating the classification decision to the hiring manager.

#### *Purchasing Services*

- Purchasing Services is responsible for coordinating supplier setup for each independent contractor and performing necessary due diligence upon supplier setup.
- Purchasing Services will review incoming documentation and refer any inconsistencies to the hiring manager and/or Human Resources for review and resolution.
- Purchasing Services is responsible for executing most contracts forwarded by the independent contractor, and/or determining if additional contract language (beyond the Purchase Order contract) or signatures are required by the University.
- Purchasing Services is responsible for notifying the hiring manager when the independent contractor has been added to the supplier database.

#### *Tax Department*

- The Tax Department is responsible for monitoring government compliance requirements regarding independent contractor determination and ensuring that any changes are communicated to the appropriate University department(s). The Tax Department is responsible for serving as a resource for providing assistance through "gray areas" in reviewing independent contractor status.

## **POLICY**

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The determination that an individual is an independent contractor must be made ***prior*** to any business commitment with the individual and prior to the individual's performance of service. Early determination ensures that proper payment is provided and any taxes on such payments are appropriately withheld. An individual who is engaged by the University to provide a service could be considered an employee or an independent contractor.

Definition of an independent contractor is governed by the federal tax code and common law. Improper classification of an employee as an independent contractor may subject the University to significant tax penalties as well as penalties under other government laws such as the Affordable Care Act. Therefore, it is imperative that common standards are applied in classification and contracting, and that each case is fully documented and auditable.

When engaging with an individual service provider, the following policies must be adhered to:

- 1) The individual service provider must complete the Service Provider Questionnaire and submit applicable documentation.
- 2) The hiring manager in concert with his or her School/Center Human Resource director:
  - a) Must understand and comply with the University guidelines in determining independent contractor classification.

- b) Must complete the [Service Provider Evaluation](#) form to document the determination of independent contractor classification.
- 3) Upon determining that the individual service provider is an independent contractor, the business administrator must follow University procedures for the procurement of services through Purchasing Services, including ensuring that an approved purchase order has been created. Competitive bidding and achieving fair pricing (ensuring industry/market standards) are important considerations in the negotiation of fees for service.
- 4) Independent contractors who are not U.S. residents may be paid for their services and expenses depending on their Visa type. Please review the [Payments to Foreign Nationals policy and procedures](#) from the Tax and International Operation's website.
  - a) Contact Tax Department with further questions.
- 5) Independent contractors who are performing services outside of the U.S. may need additional review. Please review the [Hiring Abroad Toolkit](#). Contact Global Support Services or Tax and International Operation with further questions.

#### Exclusions

- 1) Current University, University of Pennsylvania Health System (UPHS) and subsidiary faculty, staff, and students: Any current University, UPHS or subsidiary faculty, staff or students must be treated as employees for all work regardless of the source of payment (University funds, grant) – i.e., no individual may receive both W-2 and 1099 income from the University.
- 2) Former University employees: If a former employee is providing a service that is the same as or similar to that of a current employee, he or she must be paid as an employee and not as an independent contractor.
- 3) Tutors: Any individual working as a tutor, regardless of whether or not he or she is currently on the University payroll, must be treated as an employee.
- 4) Instructors: Any individual conducting workshops, classes, or seminars on University premises for any University department must be treated as an employee unless it is for a Limited Engagement as outlined in [Policy #2319.3](#).
- 5) Academic Coaches and Advisors: Any individual working as an academic coach or advisor must be treated as an employee.

### **DETERMINING INDEPENDENT CONTRACTOR STATUS**

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Both the Internal Revenue Service and the U.S. Department of Labor (DOL) offer guidance on how to determine independent contractor status. The IRS uses a common law test to determine a service provider's classification as either an employee or an independent contractor for tax purposes. The common law test holds that if a business tells or has a right to tell a service provider how, when, and where to work, then the service provider is an employee. The IRS has

developed Categories of Evidence (Behavior Control, Financial Control and Relationship of Parties) to determine if an organization has enforced business controls and directs a service provider, or has a right to do so. The IRS website states that: “In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered....The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.”

The DOL guidance has been issued mainly in the context of compliance with the Fair Labor Standards Act (FLSA). Under an Administrator’s Interpretation issued in July 2015, the DOL has recently concluded that most workers are employees under the FLSA’s broad definitions. The DOL uses an “economic realities” test, the goal of which is to determine whether a worker is economically dependent on the employer or is really in business for himself/herself.