Individual Service Providers: Classification & Payment

FY 2024
Transition to Division of Finance

• January 2024

• Send completed, signed forms by submitting a ticket through the BEN Helps Support Portal.
  • Service Provider Questionnaire (SPQ)
  • Service Provider Evaluation Worksheet (SPE)
  • Limited Engagement Agreements

• Minor updates to the forms (SPQ, SPE, LE)

• Individual Service Provider Classification website
What is an independent contractor?

• a worker who provides services to the University
• non-employee
• paid through Accounts Payable
• not a Penn faculty, staff, or student
What is a limited engagement?

• a service of an academic nature, short duration, and low dollar amount
• $1,000 or less per transaction, $5,000 calendar year max
• guest speakers, guest lecturers, artists, performers, writers, editors, board members, critics, preceptors, mentors
• not for Penn faculty, staff, or student
Compliance Requirements

Internal Revenue Service
U.S. Department of Labor
IRS Common Law Rules

The degree of control and independence of workers fall into three main categories, and each must be considered when determining if a worker is an employee or independent contractor.

<table>
<thead>
<tr>
<th>Behavioral Control</th>
<th>Financial Control</th>
<th>Type of Relationship</th>
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</thead>
<tbody>
<tr>
<td>Does the business control or have the right</td>
<td>Does the business have the right to control the</td>
<td>How does the worker and the business see their relationship with each other?</td>
</tr>
<tr>
<td>to control how the worker does their job?</td>
<td>economic aspects of the worker’s job?</td>
<td></td>
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<tr>
<td>Factors to consider include:</td>
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<td>Factors to consider include:</td>
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<tr>
<td>Type of instructions given</td>
<td>Significant investment</td>
<td>Written contracts</td>
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<tr>
<td>Degree of instruction</td>
<td>Unreimbursed expenses</td>
<td>Employee benefits (i.e., 403(b), insurance vacation pay, etc.)</td>
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<tr>
<td>Evaluation systems</td>
<td>Opportunity for profit or loss</td>
<td>Ongoing relationship</td>
</tr>
<tr>
<td>Training</td>
<td>Services available to the market</td>
<td>Services provided as key activity of the business</td>
</tr>
<tr>
<td></td>
<td>Method of payment</td>
<td></td>
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</tbody>
</table>
# Financial Policies

<table>
<thead>
<tr>
<th>Policy</th>
<th>Title</th>
<th>Description of Updates</th>
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<tbody>
<tr>
<td>2319</td>
<td>Payment to Individuals for Human Subject Fees, Honoraria, Limited Engagements and Independent Contractor Services</td>
<td>• defines the types of service providers that fall under Policy 2319</td>
</tr>
</tbody>
</table>
| 2319.3 | Limited Engagement                                                   | • defines payment for this subset of independent contractors  
• requires classification of a service provider as an independent contractor be made before agreement with individual or performance of services  
• addresses payment to U.S. persons and nonresident aliens both inside and outside of the U.S.                                                                                                                   |
| 2319.4 | Independent Contractor Policy                                         | • outlines policies, procedures, roles and responsibilities  
• requires classification of a service provider as an independent contractor be made before agreement with individual or performance of services  
• excludes students, tutors, instructors, and current and former faculty and staff                                                                                                                                  |
What is a *honoraria*?

A gratuitous payment of money, or any other thing of value, to a person for the person’s participation in a usual academic activity for which no fee is legally required.

A *human subject fee*?

A payment that represents remuneration and/or reimbursement to individuals participating as subjects in a research project.
Determining Worker Classification
What is an independent contractor?

- a worker who provides services to the University
- non-employee
- paid through Accounts Payable
- not a Penn faculty, staff, or student
Independent Contractor Forms

Service Provider Questionnaire
Service Provider Evaluation Worksheet
ISP Process Overview

School or Center
- Requests service provider complete & sign Service Provider Questionnaire
- Reviews Service Provider Questionnaire and completes Service Provider Evaluation
- Forwards SPQ & SPE to Compliance Specialist via BEN Helps Support Portal

CTC&P Compliance Specialist or GSS
- Reviews SPQ and SPE and determines classification
  - Independent Contractor – Compliance Specialist returns paperwork via BEN Helps for IC processing
  - Employee – Compliance Specialist returns paperwork via BEN Helps to initiate hiring process

School or Center
- Independent Contractor - School or center representative creates a Purchase Order in the Penn Marketplace, attaches the signed SPQ, SPE, & supporting documents
- Employee – School or center representative contacts HR to initiate hiring process
What is a limited engagement?

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Limited Engagement Forms

- Limited Engagement Agreement – U.S. Persons
- Limited Engagement Agreement – Nonresident Alien
- Limited Engagement Agreement – Global
Limited Engagement Process Overview

**School or Center**
- Requests service provider complete & sign Limited Engagement Agreement
- Forwards the LEA to the Compliance Specialist via BEN Helps Support Portal

**CTC&P Compliance Specialist**
- Reviews Limited Engagement Agreement, signs, and returns form via BEN Helps Support Portal

**School or Center**
- School or center representative creates a non-PO Payment Request in the Penn Marketplace, attaches the signed LEA & supporting documents
Nonresident Alien Service Providers

- An individual is a nonresident alien for U.S. federal tax purposes if they do not pass the Green Card Test or the Substantial Presence Test.
- There may be restrictions to the work a nonresident alien can perform in the U.S. based on their visa status.
- The Payroll Accountant verifies whether the nonresident alien’s visa type allows payment.
Payments to Students

- Students may not be paid as independent contractors.
- See the SRFS Student Payment Policies webpage for more info and the Student Payment Decision Tree.
Cost of Misclassification to the School or Center

- $50 per unfiled W-2
- Penalty of 1.5% of wages paid
- 20% of employee’s share of FICA taxes
- 100% of the matching taxes the employer should have paid
- Failure to pay penalty = 0.5% of the unpaid tax liability for each month up to 25% of the total tax liability
- Up to $10,000 penalty per worker for intentional misclassification
Questions?