

UNIVERSITY of HOUSTON
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES

SECTION: Human Resources
AREA: Recruitment and Employment

Number 02.03.02

SUBJECT: Contracting for Services Using Contract Workforce vs. Employment
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I. PURPOSE AND SCOPE

This document provides guidelines to determine whether (1) the relationship with an individual providing services to the university is that of an employee or that of an independent contractor under the [U. S. Internal Revenue Code](#) and the laws of the state of Texas, and (2) guidelines as to the university's use of contract workforce in retaining independent contractors and temporary workers supplied by approved staffing companies.

II. POLICY STATEMENT

The University of Houston is subject to the [Internal Revenue Code](#) and related regulations governing wage withholding and employment taxes and, therefore, governing whether a university worker is hired as an employee or contracted as an independent contractor. Also, the state of Texas provides restrictions related to working relationships with current and former university employees. The appropriate relationship shall be determined in accordance with criteria provided in this document and with [Internal Revenue Service \(IRS\)](#) guidelines before any financial commitment is made.

The individual providing services to the university shall normally be hired through the employment process as an employee unless he or she (i) is clearly eligible for independent contractor status under IRS guidelines, and (ii) is able to be effectively used and managed as part of the university's contract workforce.

III. DEFINITIONS

- A. Business organization: For the purposes of this document, an organization operating with an employer identification number and an organizational name.
- B. Employee: Any person hired to perform a service for the university who is subject to the will and control of the university in terms of what must be done and how it must be done – regardless of whether the person is staff or faculty, full-time or part-time, temporary or permanent, or holds student status. An employee is hired through the Human Resources Department and paid through the payroll/personnel system, with accompanying federal income and FICA tax withholding, as required by law.
- C. Independent contractor: An individual over whom the university has the right to control or direct the result of the work, but not the means or method of accomplishing the result. The independent contractor is hired on a contract and is paid through the accounts payable system; federal income and FICA taxes are not withheld (except, in some cases, for taxes withheld for foreign national visitors). The amount of the contract must be the gross amount charged to the department's budget. Therefore, if taxes are withheld, the net amount will be the amount of the check.

- D. Individual: For the purposes of this document, a person performing services as an individual under the person's name and social security number.
- E. Seven calendar days: For the purposes of this document, any part of seven calendar days within a seminar/work period, regardless of the number of hours taught/worked each day, or whether the days are consecutive or non-consecutive.
- F. Temporary: For the purposes of this document, seven calendar days, as defined above.

IV. DETERMINING THE APPROPRIATE WORKING RELATIONSHIP

- A. Unless the university relationship with the individual providing the service is extremely short term and involves no right by the university to control the details or means by which the work result is accomplished, the individual shall normally be hired through the personnel/payroll process (as outlined below) as an employee.
- B. When a university department enters into a short-term service relationship and any doubt exists about the appropriateness of contracting with the individual as an independent contractor, the hiring department shall be responsible for subjecting the relationship to the IRS multiple-factor control test outlined in the Internal Revenue Service (IRS) Guidelines.

The [Check List for Determining Independent Contractor vs. Employee Classification](#) is provided for this purpose and should satisfy the requirement in most cases. Since so many variables exist, it cannot be considered an absolute, quantifiable solution to determining every work relationship.
- C. If questions remain about the appropriate relationship, the Human Resources Department should be contacted for guidance.
- D. The college or division business administrator shall review the circumstances and, through the certifying signature, certify that the appropriate working relationship (i.e., employment or contracting) with the individual has been determined.

V. PROVISIONS RELATING TO CURRENT UNIVERSITY EMPLOYEES AND RECENT PAST EMPLOYEES

- A. Under university policy, when an employee of any university of the University of Houston System performs work at the University of Houston under their name and social security number, including work beyond the scope of their regular position, that individual may not be hired as an independent contractor, but must be paid through the university's payroll system – regardless of whether the work would otherwise qualify as a contracting relationship.

An employee hired to do work beyond the scope of regular employment (overload) is subject to university additional compensation policies ([MAPP 02.01.06 – Additional Compensation – Exempt Staff](#)). An employee working at another University of Houston System university is subject to multiple employment and/or dual office holding policies ([Board of Regents Policy 57.01.3](#), [SAM 02.A.29 – Ethical Conduct of Employees](#)).
- B. Similarly, an individual who has been an employee of any university of the University of Houston System within the past 12 months may not be engaged under their name and social security number on an independent contractor basis, but must be employed and paid through the personnel/payroll system – regardless of whether the work would otherwise qualify as a contracting relationship.

- C. This document provides for the possibility of a current or recent past university employee contracting with the university as an independent contractor through the name and employee identification number of a business. However, under no circumstances may a department contract with an employee through the employee's business in the following situations:
1. When the work undertaken under the independent contract is with the employee's university department and within (or was within the past 12 months) the scope of responsibilities of the employee's university position.
 2. When the contractual agreement is undertaken to circumvent the limits or the terms of the university additional employment (overload) policies.
- D. University employees on full-time appointments are compensated for full-time employment. Work may not be undertaken outside the scope of the responsibilities of an employee's position when such additional work results in a conflict of commitment or a conflict of interest, as defined in [SAM 02.A.29 – Ethical Conduct of Employees](#).
- E. It is the responsibility of the employee and of the employing and contracting department to ensure compliance with these provisions.

VI. GENERAL PROVISIONS

- A. As a general rule, eligibility to contract with an individual to provide services to the University of Houston as an independent contractor must be clearly demonstrated under the terms of the multiple factor control test outlined by the IRS. These factors are provided in the online desk manual at http://www.uh.edu/af/universityservices/SurvivalGuide/I/IRS_Human%20Resources.pdf.
- The ultimate judgment is based on the combined weights of each factor; there is no absolute quantifiable result, although more than one-half on either side is a strong indication.
- B. In general, to be eligible for independent contractor status, most of the following factors must apply:
1. The individual controls the method by which the work results are accomplished, as well as the details of the results themselves, without direct supervision by the university.
 2. The individual is financially independent and headquartered in a location physically separate from the university.
 3. The individual offers similar or related services or products to multiple clients.
 4. The relationship with the university is temporary or occasional in nature.
 5. The individual supplies the tools or equipment necessary to perform the job.
 6. The individual sets the hours of work. (This factor does not apply in teaching relationships.)
- C. As a general rule, if most of the following factors apply, the individual should be put on the university payroll as an employee:

1. The university has the right to control the method of accomplishing the desired results and the details of the result (even if the control is not exercised); i.e., the work may be supervised and the methods and goals set by the supervisor.
 2. The university has authority to reassign or change the work assignments, and to discipline and terminate the individual.
 3. All or most of the individual's earnings come from the university.
 4. The individual has a continuing relationship with the university.
 5. The university furnishes the tools or equipment necessary to perform the job, as well as the facility.
 6. The university sets the hours and place of work.
- D. As a general rule, when the individual performing the service is not a current or recent past employee of the university, the individual may be treated as an independent contractor when either of the following conditions exist:
1. The individual is a full-time student or is employed full-time by a separate, non-state of Texas organization and the service performed is occasional.
 2. The work being done for the University of Houston is of short duration and/or occasional.

Examples of appropriate contracting relationships under this provision include: professional employees in private business or self-employed who present periodic lectures to university classes or teach short-term non-credit courses or seminars; game officials; and workers in periodic or seasonal sports events.

- E. Service relationships that are unusual and hard to categorize require the approval of the college or division business administrator and the Human Resources Department prior to any commitment between the university and the individual.

VII. PROVISIONS RELATING TO CONTRACT WORKFORCE

In accordance with the state of Texas General Appropriations Act, no appropriated funds may be expended for payment of a contract workforce in which the contract is executed, amended, or renewed on or after September 1, 1999, until the university:

- A. Examines the legal and personnel issues relating to use of a contract workforce. All questions relating to legal and personnel issues should be directed to the Office of General Counsel and the Department of Human Resources, respectively;
- B. Conducts a cost benefit analysis prior to hiring contract workers or amending or renewing existing contract workers; and,
- C. Documents why and how the use of contract workers fit into the university's staffing strategies, including consideration of the university's mission, goals and objectives, existing and future employee skills needed, compensation costs, productivity, nature of services to be performed, and workload.

To comply with this section, university departments shall consult the Best Practices and Guidelines for effectively Using Contract Workforce (SAO Report No. 99-326) March, 1999. These practices

XII. REFERENCES

[U. S. Internal Revenue Code](#)

[Treasury Regulations](#)

Applicable Revenue Rulings

Applicable Court Cases

General Provisions of the State of Texas [General Appropriations Act](#)