

Subject: **Employee/Employer Relationships vs. Independent Contractors**

Applies to: All Faculty and Staff

- I. Policy: An individual performing services for the University is to be regarded as a University employee, whether the service is full- 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. Appropriate categorizing of individuals performing services to the University is essential to avoid incurring substantial tax penalties and other liabilities.

Decisions concerning the appropriate category will be made jointly by Purchasing Services and the Office of Human Resources, in consultation with legal counsel as needed. **APPROVAL MUST BE SECURED PRIOR TO COMMENCEMENT OF SERVICES.**

- II. Guidelines: A person acts as an independent contractor if the University 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 University.
- 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 paid for work performed at home or other locations off-site, while independent contractors can work on-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 University different from their regular job will generally remain in an employer-employee relationship and will be paid as an additional appointment or through extra compensation (reference Policy #211) if PAS (exempt) or for all hours worked if hourly-paid (non-exempt). Former employees will generally be hired back as full-time, part-time, time-as-reported (TAR) or temporary employees.

- III. Procedures:

- A. All actions necessary to engage a consultant or to hire an employee must be approved prior to offer and commencement of services, and must be processed at least three weeks before services are required. More time may be needed for sign-off and posting requirements.

