

DEPAUL UNIVERSITY



Use of Independent Contractors / Consultants

Category: Financial Affairs

Responsible Department: Accounts Payable

Responsible Officer: Controller

Effective Date: 7/5/2017

Policy Summary

This policy provides guidance on the use of independent contractors. In this policy, the term "independent contractor" is meant to include the term "consultant." It sets out the general criteria that should be used for classifying a service provider as an independent contractor and the tax reporting for independent contractors, pursuant to IRS regulations and guidelines.

Scope

This policy affects the following groups of the University:

- Entire University Community

This policy affects all members of the University Community.

Policy

The University ordinarily conducts its various business activities through the efforts of its employees. On occasion, however, it may be in the university's best interests to engage the services of an independent contractor to accomplish one or more tasks. In these instances, it is critical that a careful analysis be conducted in order to determine whether a service provider is, in fact, an independent contractor as opposed to an employee of the university.

The risks to the university in misclassifying service providers includes penalties and interest on under-withheld amounts, along with additional FICA taxes on amounts paid to service providers reclassified as employees by the IRS.

It is the responsibility of the department, or if associated with a grant, the principal investigator engaging a service provider to contact Accounts Payable or University Tax Services prior to the engagement or performance of service, if they are in any way unsure as to the correct classification of a service provider. A list of situations in which classification may be problematic or may need additional analysis has been provided in the "Independent Consultant vs. Employee Situations"

document, which is attached as an appendix to this policy. In addition, the [Vendor Information Forms](#) includes questions intended to assist in appropriate vendor classification.

When necessary, the Accounts Payable Manager or the Tax Manager shall make the final determination as to the proper classification of a service provider for employment tax purposes. In making a classification decision all facts and circumstances will be considered, along with the degree of control and independence of a service provider, based on the following three categories:

- Behavioral: does the company control or have the right to control what the service provider does and how the service provider does their job?
- Financial: are the business aspects of the service provider's job controlled by the payer? This includes things such as how the payment for services is determined and how frequent it is paid, whether expenses are reimbursed, who provides tools/supplies, etc.
- Type of Relationship: are there written contracts or employee type benefits (e.g. pension plan, insurance, vacation, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

More information about the above categories can be found in the "Independent Contractor vs. Employee Classification - IRS Twenty Factors" document, which is attached as an appendix to this policy.

Independent contractors cannot be hired to teach academic courses, whether or not a course is offered for academic credit. Academic courses can only be taught by individuals who are hired as employees.

Departments who wish to hire an individual, who either is a current employee or was an employee during any part of the calendar year, must consult with University Tax Services prior to engaging the individual for services.

Independent contractors are required to complete and sign university and tax documentation prior to the engagement, or performance of service. Those independent contractors who do not provide proper tax documentation are subject to applicable withholding.

Written agreements are required for all service related engagements. Please see the [Contract Requirements and Procedures](#) policy for specific requirements related to legal review of service agreements.

In addition, nonresident alien independent contractors who perform their service inside United States borders are subject to applicable withholding, unless a tax treaty provision applies that would reduce the standard withholding rate. [Contact Accounts Payable](#) for assistance in determining whether a tax treaty provision exists.

Procedures

For services over \$3,500, follow the [Purchasing & Bidding Requirements](#) policy, which stipulates use of a purchase order. For services of \$3,500 or less, approved vendor invoices should be forwarded

directly to Accounts Payable in accordance with the [Payments to Vendors, Service Providers, and Other External Parties](#) policy.

The information in this policy, along with the documents referenced in Section VII of this policy can be used to assist in the initial classification of a service provider. Departments can also [contact Accounts Payable](#) or the University Tax Services for assistance.

Departments should contact Restricted Accounting in Financial Affairs and the Office of Research Services with questions regarding the use of independent contractors and consultants for grant purposes.

The [Vendor Information Form \(VIF\)](#) required for new vendors includes questions to assist in the appropriate vendor classification of employees vs. consultants/independent contractors. Contact Procurement Services for purchase order-related service providers or Accounts Payable for non-purchase order service providers for further information and guidance.

Divisional Collaborations

Procurement Services
Office of Research Services
Restricted Accounting

Contact Information

Tax Manager
University Tax Services
Financial Affairs
(312)362-7187

Accounts Payable Manager
Controller's Office/Financial Affairs
(312) 362-5372

Appendices

[Independent Consultant vs. Employee Situations](#)
[Independent Contractor vs. Employee Classification - IRS Twenty Factors](#)

History/Revisions

Origination Date: 06/30/1995
Last Amended Date: 07/05/2017
Next Review Date: N/A