



Downstate Health Sciences University
Office of Research Administration

The Research Foundation for SUNY Policy

Subject: Engaging Independent Contractors

Effective Date: December 28, 2016 (Updated March, 1 2023)

Issued By: The Office of Research Administration (ORA)

Responsible Parties:

- PI – Principal Investigator
- Department Personnel
- Human Resources
- GM's- Grant managers
- Accounts Payable / Procurement

Who Should know this policy:

- Department Chairs
- School Deans
- SVPR
- SPA – Sponsored Program Administrators
- Director of Finance, Office of Research Administration

Background:

Departments often engage the services of individuals who are not employees of the Research Foundation, including independent contractors, guest lecturers, entertainers, suppliers, and others. It is important to correctly classify independent contractors and employees to ensure the appropriate compensation method and tax obligations are met.

According to the Department of Labor, there are several factors that determine when someone is an employee versus an Independent Contractor. Misclassification will result in Department of Labor penalties and IRS fines for the institution. Careful attention to avoid misclassification is required. Wishing to avoid the institutional fringe rate is not an allowable justification for retaining an Independent Contractor.

If the worker is a person or sole proprietor, he or she must be properly classified as either an independent contractor or an employee when establishing the work relationship. A person cannot



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simultaneously have an employee and an independent contractor relationship with the Research Foundation (RF) or SUNY Downstate Health Sciences University (DHSU).

This policy sets out the criteria that define independent contractors and the required procedures to correctly classify and pay them. The classification must be documented and complete prior to services rendered.

Note: The Research Foundation (RF) is legally obligated to properly classify workers even if a sponsor provides funds for independent contractors in an award.

Operating locations should ensure that workers are properly classified when reviewing application budgets and when hiring an employee or engaging an independent contractor. If at any time an operating location cannot make a determination, the Central Office of Employee Services will provide assistance.

Roles and Responsibilities:

All responsible parties will ensure that the classification is done correctly to ensure the institution does not incorrectly classify an Independent Contractor instead of an employee. All requests for an Independent Contractor require **prior approval** by HR *prior to the start of the engagement*. Retroactive agreements and payments cannot be accommodated, as an incorrect classification will deem the institution non-compliant to applicable employment laws and regulations and can affect the insurance requirements, as applicable.

There are instances where the Independent Contractor will be required to carry insurance to protect the research and/or data they are providing to the study. The amount of coverage will be determined based on the Statement of Work or work product. *Please Note:* Insurance coverage cannot be implemented retroactively.

The engagement of an Independent Contractor and subsequent payment will not occur until HR has determined the relationship is that of an Independent Contractor.

PIs / Department Personnel are responsible to ensure that the contract is deliverable-based and develop a Scope of Work. They are to ensure that the information provided on the decision tree (see 'engaging an Independent Contractor' process) is accurate and that an Independent Contractor is not being onboarded for the sole purpose of avoiding paying costs associated with salary and fringe. Additional responsibilities include providing Human Resources with all required paperwork to begin the process of classification and to ensure all invoices are correct, deliverable-based and are on the required invoice template (see 'engaging an Independent Contractor' process).

PIs/Department Personnel are required to submit, in advance of engaging an Independent Contractor, the following for HR review and determination of relationship:



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- 1) The Independent Contractor decision tree
- 2) A detailed scope of work [deliverable-based], including assignments to travel to off-campus activity (e.g., software development conference, etc.);
- 3) hourly fee or deliverable-based fee;
- 4) LLC documentation, if applicable;
- 5) ORA pre-award or post-award confirmation of individuals status on proposal submission;
- 6) Any additional relevant documentation, i.e. resume, independent contractor website, advertisement, etc.

IF HR concurs with the Independent Contractor classification, HR will forward the Independent Contractor package for completion by the PI/Department personnel.

Independent Contractor is responsible to ensure that services provided fall in line with services provided to others at the same rate. Independent Contractors are required to have insurance coverage for their responsibilities, and we strongly suggest an Independent Contractor become an LLC. They are also responsible to use the invoice template included in the Independent Contractor package.

Office of Research Administration is responsible to ensure that employees vs. independent contractors are classified correctly in line with IRS regulations. They are also responsible to ensure that a complete Independent Contractor package has been provided by the PI and there is sufficient funding available to support an Independent Contractor. Furthermore, it is the responsibility of the ORA team to ensure that these funds are encumbered in advance of invoices and that invoices are reviewed and processed accurately. It is the responsibility of ORA to ensure that no invoices are processed where an Independent Contractor package is not on file.

Exception:

If a person or sole proprietor is providing a one-time incidental service (such as a lecture), this policy does not apply. Example: If a lecturer is delivering a one-time lecture on a specific area of expertise, the person can be engaged without meeting documentation requirements. If, however, the speaking engagements are extensive and will take place over a longer period of time, the engaging process should conform to this policy.

It should also be noted that a lecturer with an ongoing working relationship may be considered an employee.

IRS Rules for engaging an Independent Contractor:

There are several factors that must be taken into consideration when making the determination as to whether someone is classified as an employee vs. an Independent Contractor. Please use this decision

tree to guide you in making this determination and HR may request additional information as necessary to avoid a misclassification.

Behavioral Control - Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work.

The behavioral control factors fall into the following categories:

1) Types of Instruction Given:

An employee is generally subject to the business's instructions about when, where, and how to work. All of the following are examples are types of instructions about how to do work.

- When and where to do the work;
- What tools or equipment to use;
- What workers to hire or to assist with the work;
- Where to purchase supplies and services;
- What work must be performed by a specified individual;
- What order or sequence to follow when performing the work.

2) Degree of Instruction:

The more detailed the instructions, the more control the business exercises over the worker. More detailed instructions indicate the worker is an employee. Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.

Note: The amount of instruction needed varies amongst positions and/or jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals and in other cases, the tasks may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

3) Evaluation System:

If an evaluation system measures the details of how the work is performed, these factors would point to an employee. If the evaluation system measures just the end result, then this can point to an independent contractor.

4) Training:

If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship. However, independent contractors ordinarily use their own methods.

In addition to the above factors in making your decision, the below guidance also leads to the decision as to whether someone is an Independent Contractor or that of an employee.

Financial Independence

1) Significant Investment

An independent contractor predominantly has significant investment regarding the tools/resources required in order to complete a task, whereas an employee relies on their employer to provide these resources.

2) Unreimbursed Expenses

An Independent contractor is more likely to have unreimbursable expenses whereas an employee relies on their employer to provide reimbursement for job-related costs. Fixed ongoing costs are incurred regardless of where the work is being performed.

3) Opportunity for profit/loss

Does the worker have a possibility of incurring a loss, meaning that costs they incur is greater than they are getting paid?

4) Services made available to general public

An Independent contractor provides the same services to other companies and individuals at a set market value rate that they would provide to Downstate (i.e. running assays, preparing surveys, project management, etc.). This service should be verifiable, i.e. website, advertising, resume, etc.

Relationship

An independent contractor must have a specific Scope of Work with deliverables clearly outlined in a contractual manner to identify the relationship whereas an employee's relationship is clearly defined by hire and guided by an employee handbook rather than a written contract.

a. Benefits

An employee receives benefits, vacation time, etc. whereas an Independent Contractor does not



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b. Permanency

If the relationship between the two parties is for a specific project or period, this leans towards an Independent Contractor relationship. If there is no specific project or time period for the work to be done and is an ongoing relationship, this leads to that of an employee.

c. Key activity of business / Core function of program

Are the services being provided a key component of the business? If so, this would lead to an employee/employer relationship.

Related Processes:

Engaging an Independent Contractor

Related Forms:

Independent Contractor document package