

THE UNIVERSITY OF ALABAMA FINANCIAL AFFAIRS	Topic: Independent Contractor Policy		
	Policy #: TX-1	Version:	Effective Date: 02/01/2015
	Submitted by: Michelle L'Etang	Title: Tax Director	Dept./Area: Tax Office

Purpose:

The purpose of this policy is to provide guidelines for distinguishing between **employee** and **independent contractor (IC)** status, in order to safeguard The University of Alabama (UA) and its employees from potential liability related to incorrect classification.

Policy Statement:

The Internal Revenue Service (IRS) governs policy used in determining whether an individual is performing services as an IC or employee. The IRS presumes that any individual providing service is an employee, unless there is sufficient evidence to support the classification of the individual as an IC.

Proper determination and classification of an individual as either an employee or IC is critical for a number of reasons. The misclassification of an employee as IC can result in UA being held liable for the worker's employment taxes, as well as significant penalties and interest. Where an individual is classified as an employee, UA must withhold income and FICA/Medicare taxes and match the employee's share of FICA/Medicare taxes. In addition, other obligations such as annual leave, sick leave, health insurance, retirement contributions, etc. may be incurred by UA on behalf of employees. Violation of employment eligibility verification rules (Form I-9) may also occur when a worker is inaccurately classified as IC rather than employee. Conversely, if the worker is correctly classified as IC, UA has no obligation to withhold income or FICA/Medicare taxes but must report payments to the individual and the IRS on Form 1099-MISC on a calendar year basis.

Policy:

Determination of IC Status

The determination of IC status is driven by facts and circumstances. There have been many court cases related to this topic. The IRS has developed guidance based on the most common and significant IC characteristics. The UA Tax Office has summarized these characteristics on the UA [IC Form](#), which is a tool used for analyzing situations to determine IC vs employee status.

The IC Form is used by UA departments to request approval to pay an **individual**, as defined below, for services as an IC. The IC Form must be completed and submitted to the UA [Tax Office](#) *prior to* an individual performing any services for which a fee payment is expected, including **guest speakers**.

The IC form is *not* required for:

- **business entities**, as defined below.
- expense reimbursements only – where no fee is paid.
Expense reimbursements require appropriate documentation in compliance with UA Spending and Travel Policies.

Upon receipt of a completed IC Form, the Tax Office will review the information provided, make a determination, sign the form, and return the form to the department with the IC status noted as either approved or not approved.

If IC status is approved, the department may proceed with making arrangements for the services, in accordance with the [Professional Services](#) policy and guidelines. Payment processing will be through Accounts Payable, using a Miscellaneous Disbursement Voucher (MDV). A copy of the approved IC Form must be included with the MDV documentation.

If IC status is not approved, the department will need to follow Human Resource policies and procedures to pay the individual as an employee for services rendered. Payment processing will be through Payroll, using a Personnel Action (PA) Form.

It is the paying department's responsibility to assure that the IC Form is completed accurately, to enable the Tax Office to make the determination of IC status based on all the known facts and circumstances. If an incorrect classification is made due to a department misrepresenting or omitting facts on the IC Form, the department may be held liable for any financial penalties associated with the misclassification. The department should contact the [Tax Office](#) if questions arise in completing the IC Form.

UA employees are prohibited from paying ICs with personal funds and then requesting reimbursement from UA. All requests for payments to ICs must be submitted in accordance with this policy and all payments must be made directly from UA to the IC.

Restrictions on certain payees

- **Foreign Nationals:** Payments to foreign nationals are governed by specific federal tax regulations as well as immigration rules. Contact the [Tax Office](#) for assistance *before* a foreign national is hired to perform any service as an IC. Certain visa types may limit UA's ability to legally pay the foreign national as an IC.
- **UA students:** Currently enrolled students providing services for UA generally should be hired as employees in accordance with Human Resource policies. In addition, a former student who has recently graduated will rarely meet the IRS criteria for IC status. In very limited circumstances, a student may qualify as an IC (for example: disc jockey for an event who has a bona fide business, provides the same service to others, has their own equipment, etc.)
- **Current UA Employees:** An individual who is currently on UA payroll in any capacity will generally not be considered an IC for any services they provide to UA. If an employee of one UA department is hired by another department to perform additional duties, payment must be processed through Payroll in accordance with Human Resource policies.
- **Former UA Employees:** A former UA employee rehired as a consultant will rarely meet the IRS criteria for IC status, especially if the former employee is rehired during the same calendar year in which he/she ended employment at UA. A department that engages a former employee for services will almost always be required to use the employment process and make payments through Payroll.
- **State of Alabama Retirees:** If the individual is a retiree from UA or any Alabama Teachers/Employees Retirement Systems (TRS/ERS) affiliated entity, annual compensation limits will apply regardless of whether the retiree is performing services for UA as an employee or an IC. UA is required to notify the Retirement Systems of Alabama (RSA) of payments made to participating retirees.

- **Individual related to UA employee:** If the service provider is related to a UA employee, this must be disclosed as applicable on the IC Form. The Human Resources [Nepotism Policy](#) will apply, as well as [State of Alabama Ethics Commission](#) rules. For further details regarding Conflicts of Interest and Disclosure Statement requirements, refer to the [Professional Services](#) policy.

Restrictions on certain services

Due to the nature of UA's business, individuals providing the following services will always be classified as employees:

- Anyone who teaches a course from which students may receive academic credit. This includes distance education and online courses, as well as courses taught at locations other than the UA campus.
- Individuals performing research assistance under the direction of UA personnel.
- Individuals performing trade-type duties (for example: clerical, janitorial, grounds-keeping, logistics or security services). However, if UA engages an outside employment agency to provide these types of services, the agency will be considered a contractor and the individuals are employees of the agency, rather than employees of UA.

Definitions:

- **Business Entity:** A Governmental Entity, Corporation, Partnership, or a Limited Liability Company (LLC) that is classified as a Corporation or Partnership for tax purposes. A business entity will have its own EIN; it will not use a Social Security Number (SSN) for tax reporting purposes.
- **Employee:** An individual performing services that can be controlled by the payer as to what will be done and how it will be done. The payer can direct the individual with regard to the end result, as well as the process by which the end result is accomplished.
- **Employer Identification Number (EIN):** An Employer Identification Number (EIN) is also known as a federal tax identification number. It is a unique 9-digit number assigned by the IRS and has the format xx-xxxxxxx.
- **Foreign National:** A person who is not a citizen or legal permanent resident of the U.S.
- **Guest Speaker -** A non-employee engaged by the University to lecture, present, or otherwise speak on a subject about which s/he is considered to be an expert. Examples include speakers/presenters at conferences, symposiums, or lecture/speaker series and/or guest lecturers in classes or other training events.
- **Independent Contractor (IC):** An individual or firm providing services where the payer has the right to control or direct only the end result of the work, not the specifics of what will be done and how it will be done. An IC is generally engaged to perform specific services for a stated fee or contracted amount, and may provide services to the public. An IC typically has a separate workplace, is not supervised, and has a particular, often specialized, set of skills.
- **Individual:** A person who does not have a separately recognized entity for federal income tax purposes. The person may use his/her name and SSN for tax reporting purposes, or may operate as a sole proprietorship with a "doing business as" (DBA) name and EIN. This category also includes a single-member LLC that is a disregarded entity for tax purposes, where the owner is an individual.

Other Departments and/or Divisions:

This policy applies to any UA departments that wish to engage the services of independent contractors.

References:

IRS Publication 1779 *Independent Contractor or Employee* <http://www.irs.gov/pub/irs-pdf/p1779.pdf>

Publication 15-A *Employer's Supplemental Tax Guide* <http://www.irs.gov/pub/irs-pdf/p15a.pdf>

IRS Tax Topic 762 *Independent Contractor vs. Employee* <http://www.irs.gov/taxtopics/tc762.html>

Office of the Vice President of Financial Affairs:

Approved by: _____

Date: _____