

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Human Resources

NUMBER: 02.A.24

AREA: General

SUBJECT: Employees and Independent Contractors

1. PURPOSE

- 1.1. This document provides guidelines for determining employment relationships for the University of Houston System and is written in accordance with Internal Revenue Service Guidelines. Failure to classify service providers correctly may result in tax liability for the individual and the university.
- 1.2. This document applies to all service providers except temporary personnel who are paid through an employment agency.

2. DEFINITIONS

- 2.1. Employee: An employee of a university of the System is an individual who performs services that are subject to the will and control of the university in terms of what must be done and how it must be done. For purposes of this administrative memorandum, the term “employee” refers to any individual serving in a faculty, research, or staff capacity subject to the terms and conditions described above. An employee is paid through the payroll system, with accompanying tax withholding as provided by law.
- 2.2. Independent Contractor: An independent contractor is 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 paid through the accounts payable system; taxes and Federal Insurance Contributions Act (FICA) are not withheld.

3. POLICY

- 3.1. It is the policy of the System that each university shall appropriately classify service providers as employees or independent contractors before any financial commitment is made on the part of the university.
- 3.2. Under provisions of state and federal law, an individual may not be hired as an independent contractor when currently on the payroll of any university.

Similarly, state law requires that an individual may not be hired as a consultant on an independent contractor basis if employed by any university of the System during the previous twelve month period.

- 3.3. Should a university wish to use the services of a current employee beyond that of the employee's current assignment, the human resources department of the university must be contacted prior to entering into any agreement to determine the appropriate means of hiring the employee for the additional services.
- 3.4. Each university's human resources department shall establish procedures to ensure that the guidelines set forth herein are distributed and understood within the university. Such procedures shall be used to determine whether service providers will be engaged as employees or independent contractors. The university human resources department will have final authority for determining whether a service provider is an employee or an independent contractor.
- 3.5. The policy of the University of Houston System and its universities is to ensure equal opportunity in all its educational programs and activities, and all terms and conditions of employment without regard to age, race, color, disability, religion, national origin, ethnicity, military status, genetic information, sex (including gender and pregnancy), sexual orientation, gender identity, or gender expression, except where such a distinction is required by law. For the UH System's Official Non-Discrimination Statement, see [SAM 01.D.05 – Equal Opportunity and Non-Discrimination Statement](#).

4. POLICY PROVISIONS

The following are the guidelines to be used in determining whether an individual engaged to perform services should be classified as an employee or as an independent contractor. Each of the guidelines seeks to establish the degree of control over the individual. The greater the degree of control, the greater the argument for classification as an employee. If the relationship is still unclear after applying these guidelines, the individual should be classified as an employee.

- 4.1. An employee is required to comply with the university's instructions about when, where, and how to perform the assigned work. An independent contractor is not instructed as to how to achieve the desired result of the services.
- 4.2. An employee generally receives training to perform services in a certain manner. An independent contractor ordinarily uses methods not defined by the university and receives no training from the university receiving the services.
- 4.3. An employee's services are an integral part of the operations of the university. An independent contractor's services can usually stand alone and are not integrated into university operations.

- 4.4. An employee has limited control over the hiring, supervising, payment, and termination of workers, whereas an independent contractor can hire, supervise, pay, and fire workers without permission or knowledge of the university.
- 4.5. An employee is hired under regular personnel procedures of the university. An independent contractor is retained to provide services for the university through regular contracting procedures.
- 4.6. An employee is hired to fill a vacant position with certain duties as specified in a job description. An independent contractor is subject to a fixed and limited duration contract to provide specific services.
- 4.7. The refusal of an employment offer on the part of an employee or applicant for employment may impact future employment offers to that individual. An independent contractor may reject a contract opportunity without affecting opportunities for future contracts.
- 4.8. An employee may be eligible or ineligible for university benefits, depending on employment status. An independent contractor is responsible for private insurance arrangements and is never eligible for any university benefits.
- 4.9. An employee is listed as an employee for university workers' compensation insurance. An independent contractor is responsible for providing their own workers' compensation insurance.
- 4.10. An employee normally has a continuing relationship with the university, whereas an independent contractor has a relationship that ends when the services are completed.
- 4.11. An employee has set hours of work established by the university. An independent contractor generally has no set hours of work.
- 4.12. An employee is to devote the budgeted FTE percentage to the business of the university, may be required to report work for other employers to the university, and is not allowed to work for others if the extra work conflicts with university employment. An independent contractor is free to work when, for whom, and for as many employers as desired without permission of the university.
- 4.13. An employee typically performs work on the university's premises, unless instructed to do otherwise. An independent contractor usually does work that can be completed on or off the university's premises.
- 4.14. An employee often must perform services in a prescribed sequence. An independent contractor is free to perform services in any manner that produces the desired results.

- 4.15. An employee may be required to provide regular reports as required by the university. An independent contractor submits reports only as specified by the contract.
- 4.16. An employee is usually paid for work by the hour or by the month. An independent contractor is customarily paid by the job in a lump sum or on a commission basis.
- 4.17. An employee is paid on specified pay days. An independent contractor receives payment as specified by the contract.
- 4.18. An employee is reimbursed or paid by the university for business and travel expenses. An independent contractor is paid on a job basis and has to assume all expenses except those specified by the contract.
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- 4.20. An employee usually is furnished by the university with any tools and materials needed to perform the job. An independent contractor supplies the tools and equipment necessary to provide the service.
- 4.21. An employee normally does not have a significant investment in the facilities used in a job. An independent contractor often does have a significant investment in facilities used in performing services. Facilities generally include equipment or premises necessary for the work.
- 4.22. An employee does not realize a profit or loss as a result of the job. An independent contractor is in a position to realize a profit or loss as a result of the contract.
- 4.23. An employee tends to work exclusively for one employer. An independent contractor normally works for more than one employer at the same time.
- 4.24. An employee usually does not make services available to the general public unless that is part of the job description. An independent contractor makes services available to the general public.
- 4.25. An employee is subject to discipline and/or discharge based on behavior and performance. An independent contractor cannot be fired as long as results produced measure up to contract specifications.
- 4.26. An employee has the right to end the employment relationship at any time without incurring liability. An independent contractor usually agrees to complete a

specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.

- 4.27. An employee has no employer identification number for federal tax purposes. An independent contractor has an employer identification number for federal tax purposes, which may be the individual's social security number.

5. REVIEW AND RESPONSIBILITY

Responsible Party: Associate Vice Chancellor, Human Resources

Review: Every five years

6. APPROVAL

Approved: /Raymond Bartlett/
Senior Vice Chancellor for Administration and Finance

 /Renu Khator/
Chancellor

Date: January 13, 2024

7. RELATED STATUTES, POLICIES, OR REQUIREMENTS

[IRS Publication 15-A: Employer's Supplemental Tax Guide – Employee or Independent Contractor?](#)

[IRS Publication: Understanding Employee vs. Contractor Designation](#)

[US Dept. of Labor Fact Sheet #13: Employment Relationship Under the FLSA](#)

[Texas Labor Code § 61.001 et seq. – Texas Payday Law](#)

[40 Texas Administrative Code § 821.5 – Employment Status: Employee or Independent Contractor](#)

[SAM 01.D.05 – Equal Opportunity and Non-Discrimination Statement](#)