

# Payments to Individuals for Services Provided

## Payment Procedures for Personal Services/Independent Contractors

Review the information below to determine the correct tax status and payment method for payments to an individual; this includes payments to students regardless of the description (Stipend, Apprenticeship, Internship, etc.).

Questions concerning these procedures should be directed to the Payroll Office (ext. 5400).

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Any individual or company receiving payment for goods or services is required to provide a valid Social Security Number (SSN), an Individual Taxpayer Identification Number (ITIN), or a Federal Employer's Identification Number (FEIN). IRS Form W-9 is used by US persons and resident aliens to report their correct taxpayer identification number. If the payee is a foreign company or a foreign individual (non-resident alien for U.S. tax purposes), they should complete the appropriate form W-8. The W-8BEN is for individuals and the W-8BENE is for other entities.

It is the responsibility of the department to verify the employee/employer relationship and determine independent contractor's residency status for U.S. tax purposes **before services are rendered**.

### Employee/Employer Relationship - Common Law Rule (IRC Regulation 31.3401)

In short, a worker is an employee under common law rules if the person for whom the work is performed has the right to direct and control the worker, both as to the final results and as to the details of when, where and how the work is to be done. Where the employer does not possess that right, the individual involved is an independent contractor, not an employee.

### Key Factors Indicating Independent Contractor Status

- The University does not possess the right to instruct the person about how the work is to be performed versus an employee who must comply with instructions about when, where and how the work is to be performed.
- Independent contractors ordinarily use their own methods and receive no training from University personnel.
- An independent contractor may hire, supervise, and pay other workers under a contract.
- Independent contractors generally set their own work schedules and are responsible only for the end results.
- Independent contractors are normally paid by the job in a lump sum or on a commission basis. Payment by the hour, week, or month at frequent intervals or on a continuing basis is a strong indication that the worker is an employee and not an independent contractor.
- The independent contractor is free to work when and for whom he/she chooses marketing their services to the general public.
- Independent contractors normally furnish their own tools and materials.

- An independent contractor is generally in a position to realize a profit or suffer a loss as a result of the services performed. Opportunity for profit or loss may be established factors, among the most important of which are the following:
  1. continuing recurring liabilities or obligations, with success or failure depending on the relationship of receipts to expenditures;
  2. the individual's services establish or affect his/her business reputation and not the reputation of those who purchase the services;
  3. the individual has his/her own office, equipment, materials, or other work facilities.
- An independent contractor cannot be fired so long as the results meet the conditions of the contract.
- An independent contractor usually agrees to complete a specific project and is responsible to do so satisfactorily or is legally obligated to make good on the failure to do so. An employee can quit a job without incurring liability.

This requirement is established in accordance with IRS Revenue Ruling 87-41.

The University has identified the following professional services performed by non-employees as definitive independent contractor payments that do not require completion of the Independent Contractor Determination form.

- Guest speakers
- Guest classroom lecturers (5 days or less)
- Guest artists and performers
- Specialized patients
- Research participants
- Financial and legal services
- Rental services – facilities, equipment & tapes
- Medical services
- Accreditation evaluation services

Contractors/Individuals providing any types of professional services not specifically mentioned above will be required to complete the [Independent Contractor Determination form](#) and have it approved by Payroll prior to services being performed. The approved form must then be attached to the payment requisition that is submitted to Accounts Payable.

After completing the Independent Contractor Determination form, it may be evident that an employee relationship exists. In this case, the Office of Human Resources needs to be contacted and payment for services shall be processed through the Payroll Office with applicable taxes withheld.

NOTE: Amounts paid to a Contractor/Individual by the University totaling \$600 or more during a calendar year will be reported to the IRS as non-employee compensation on a 1099-MISC form.

## **Employee Payments**

Generally, any person who is a current employee or who has been an employee of the University during the past twelve months cannot be paid as an independent contractor for on-going services via payment requisition. Under most situations, payment must be made through Payroll and appropriate taxes withheld. Any exception will need to be approved by the Payroll Office prior to services rendered taking into consideration the circumstances. Reimbursement for any goods associated with the service for which the employee is being paid can be made with appropriate documentation.

NOTE: This paragraph refers to goods and services only. Royalties and other payments for intellectual property are discussed under a different policy.

## **Travel Reimbursements**

Currently payments representing only reimbursements of documented travel expenses (receipts required) following the University's accountable plan are not subject to IRS 1099 or 1042-S information reporting requirements. If the payment, however, includes both a reimbursement of travel expenses and a professional fee or honorarium, both will be subject to IRS 1099 or 1042-S reporting. Travel expenses that are not substantiated with receipts will be treated as compensation and reported to the IRS as income if not returned to the University.

## **Payments to Foreign Nationals (Non U.S. Citizens)**

In order to make a payment to a permanent resident alien (green card holder), a resident alien for tax purposes, or a nonresident alien for tax purposes, the IRS requires that the individual must have either a social security number or an individual taxpayer identification number (ITIN).

Nonresident aliens performing independent contractor services for the University should be advised to obtain a social security number or Individual Taxpayer's Identification Number (ITIN) immediately upon entering the U.S. if they do not already have one. The University cannot pay any individual unless we have a number or proof (receipt from the issuing agency) that application for a number has been made.

Departments are advised to check the individual's visa status prior to negotiating for any services and/or payment terms. Some visa types are very restrictive in the type of payment and/or by whom it can be made.

*In an effort to obtain certain documentation required by the IRS for payments to non-U.S. citizens, all foreign national independent contractors providing services to the University must complete and sign the proper IRS form W-8 and submit this form with the required copies of immigration documents to the Payroll Office along with the Independent Contractor Determination form. An incomplete form or a form submitted without the proper attachments could delay payment to the independent contractor. A new form must be completed and immigration documents must be submitted each time a new service is provided. All approved documentation must be attached to the payment requisition that is submitted to Accounts Payable.*

If the foreign national's U.S. tax status changes from the date the original IRS form W-8 was submitted, a new form must be completed, signed and forwarded to the Payroll Office.

Please refer to IRS form 8233 if the individual resides in a country with a tax treaty.

## **Processing Payments**

All payments for independent contract services will require certain forms as attachments to the payment requisition, depending on the type of services provided and the U.S. tax status of the contractor. See the table below.

Departments should have all the required forms available for the provider of services to complete and sign while they are still on campus or well in advance of the payment process, particularly if they are foreign nationals.

**PAYMENTS FOR PERSONAL SERVICES REQUIRED FORMS & ROUTING  
INSTRUCTIONS BASED ON U.S. TAX STATUS**

US Tax Status	Payment Requisition	IRS Form W-8 Submit to Payroll	Independent Contractor Determination Form Submit to Payroll
US Citizen	Yes	No	See # 2 below
Permanent resident alien (green card holder)	Yes	Yes, see #1 below	See # 2 below
Resident alien for tax purposes	Yes	Yes, see #1 below	See # 2 below
Nonresident alien for tax purposes	Yes	Yes, see #1 below	See # 2 below

1. Proper IRS form W-8 must be completed and submitted with immigration documents to the Payroll Office each time a new service is provided to the University. A copy of all documentation approved by the Payroll Office must be submitted with the payment requisition. Contact the University Payroll Office to determine the appropriate IRS Form (W-8 and/or 8233) the payee should complete. The form must be submitted whether payment is made directly to the individual or to another party on their behalf.
2. Any payments for personal services that are **NOT** one of the previously mentioned independent contractor exception categories will require that the department complete and sign the Independent Contractor Determination form each time a new service is provided. If it is a contract involving multiple payments, this form will be required only for the initial payment for each new contract. Once approved, this form and all the other required forms, including the payment requisition, should be sent directly to Accounts Payable.