

INDEPENDENT CONTRACTORS**I. GUIDELINES**

Appropriate categorizing of individuals performing services for the College is essential to avoid incurring substantial tax penalties and other liabilities. Decisions concerning the appropriate category will be made by Human Resources, in consultation with legal counsel as needed. Contracts in excess of \$50,000 require prior Board approval.

APPROVAL MUST BE SECURED BEFORE COMMENCEMENT OF SERVICES.**EMPLOYEE:**

- a. An individual performing services for the College is to be regarded as a College employee, whether the service is full-time or part-time, regular or temporary, unless it is clearly demonstrated that the relationship is that of a true independent contractor. An individual will be considered and treated as an employee if others in the same or substantially similar positions are employees.
- b. Current employees who perform services for the College outside of their regular duties will generally remain in an employer-employee relationship and will be paid through extra compensation, such as an overload stipend (exempt) or for all hours worked if paid hourly (nonexempt). Former employees will be hired back as full-time, part-time, or temporary employees.

INDEPENDENT CONTRACTOR:

A person acts as an independent contractor if the College directs and controls only the intended results and not the means and methods of accomplishing them. Doubtful cases of interpretation are to be resolved in favor of categorizing the individual as an employee. Specific cases will be decided on particular facts, but the following guidelines are instructive.

- a. Independent contractors generally have other clients and derive a substantial part of their income from sources outside the College.
- b. The work of independent contractors is uniquely skilled or professional in nature and requires a considerable amount of independent judgment and specialized knowledge or training obtained elsewhere. Secretarial or clerical services will generally be regarded as being provided by employees.
- c. The place where the work is performed is one indicator of an individual's employment status, but is not determinative. Employees are usually paid for work performed on-site, while independent contractors can work on-site or at home or other locations off-site.
- d. It is the substance of the relationship, not what it is called, which is important. Use of a business name is not determinative, nor is simply calling the individual an independent contractor.
- e. If an individual is determined to be an independent contractor, certain provisions of Oregon law dealing with public contracts may apply. These provisions can be found at ORS chapters 279A, 279B, and 279C. If the College determines that a relationship is an independent contractor relationship, it will also evaluate whether public contracting laws apply.

II. PROCEDURES

- a. Before services begin, all actions necessary to engage an individual as a contractor or to hire the individual as an employee must be completed.
- b. A department seeking to enter an independent contractor relationship must complete the Personal Services Contract and the screening tool attached to the contract.
- c. Independent Contractors must enter into a Personal Services Contract with the College and provide a completed W-9 form.
- d. The Business Services Department must generate a 1099 form for the independent contractor.

BP 6040

Adopted as Administrative Procedure September 3, 2014

Revised November 4, 2015

INDEPENDENT CONTRACTOR OR EMPLOYEE?

Start Here



Is or has the individual been employed with Southwestern?

Yes
→

Likely an Employee

No



Does the worker perform the same type of work that is generally performed by regular employees?

Yes
→

Likely an Employee

No



Is the worker instructed or supervised by Southwestern?

Yes
→

Likely an Employee

No



Does Southwestern provide workspace or materials to the worker?

Yes
→

Likely an Employee

No



Does Southwestern control the individual's work hours?

Yes
→

Likely an Employee

No



Can Southwestern terminate the worker?

Yes
→

Likely an Employee

No



APP

Likely an Independent Contractor