

Memo to: All UH-Downtown/PS Holders

UH-Downtown/PS 02.A.23

From: William Flores, President

Issue No. 3

Effective date: 07/09/2015

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Subject: Employees and Independent Contractors

1. PURPOSE

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

2. DEFINITIONS

- 2.1 **Employee.** An employee is an individual who performs services subject to the will and control of the University of Houston-Downtown in terms of what must be done and how it must be done. For purposes of this policy statement, 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 required by law.
- 2.2 **Independent Contractor.** An independent contractor is an individual over whom the University of Houston-Downtown 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 FICA are not withheld.

3. POLICY

- 3.1 It is the policy of the University of Houston-Downtown that service providers will be classified appropriately 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 of Houston System component. Similarly, state law requires that an individual may not be hired as a consultant on an independent contractor basis if employed by any component of the University of Houston System during the previous twelve (12) month period.
- 3.3 When the services of a current employee are desired beyond that of the employee’s regular job assignment, Employment Services and Operations (ESO) must be contacted prior to entering into any agreement to determine the appropriate means of hiring the employee for the additional services.

- 3.4 Current new employee orientation procedure dictates that all employees must come through ESO for processing. ESO will have final authority for determining whether a service provider is an employee or an independent contractor according to the policy provision guidelines in section 4 of this policy.
- 3.5 Nothing in this policy will be used as the basis for illegal discrimination against any individual or group on the basis of race, gender, age, color, religion, national origin, disability, sexual orientation, or veteran status.

4. PROCEDURES

- 4.1 The following are guidelines to be used when 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, e.g. 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.
 - a. An employee is required to comply with the employer'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.
 - b. 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.
 - c. 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 campus operations.
 - d. 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.
 - e. An employee is hired in accordance with institutional policy and under ESO personnel procedures. An independent contractor is retained to provide services for the university through regular contracting procedures.
 - f. 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.
 - g. 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.

- h. 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.
- i. An employee is listed as an employee for workers' compensation insurance. An independent contractor is responsible for providing his or her own workers' compensation insurance.
- j. An employee normally has a continuing relationship with the university, whereas an independent contractor has a relationship that ends when the services are completed.
- k. An employee has set hours of work established by the university. An independent contractor generally has no set hours of work.
- l. 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.
- m. 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.
- n. 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.
- o. 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.
- p. 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.
- q. An employee is paid on specified paydays. An independent contractor receives payment as specified by the contract.
- r. 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 in the contract.
- s. The university usually furnishes an employee with any tools, equipment, and materials needed to perform the job. An independent contractor supplies the tools, equipment, and materials necessary to provide the service.

- t. 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.
- u. 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.
- v. An employee tends to work exclusively for one employer. An independent contractor normally works for more than one employer at the same time.
- w. 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.
- x. 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.
- y. 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.
- z. 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. EXHIBITS

There are no exhibits associated with this policy.

6. REVIEW PROCESS

Responsible Party (Reviewer): Vice President for Employment Services and Operations

Review: Every three years on or before October 1st.

Signed original on file in Employment Services and Operations.

7. POLICY HISTORY

Issue #1: 08/15/03

Issue #2: 11/05/10

8. REFERENCES

[SAM 02.A.24, Employees and Independent Contractors](#)