

Staff Personnel Manual (SPP)

SPP 210: Consultants/Independent Contractors

Effective: 8/15/1985

Revised: 8/2/2024

Purpose

To define a process for determining whether a consultant/independent contractor relationship exists in order for the university to properly comply with state and federal laws

Sources

IRS Regulation § 31.3401 (c)-1

Arizona Revised Statutes § 38–503

Financial Services

Policy

Financial Services must review requests before [departments](#) engage the services of [consultants/independent contractors](#). This review is conducted to determine whether a true employee-employer relationship exists for federal, state, and FICA tax purposes.

Determination of Independent Contractor Status

Any individual performing services for the university will be presumed to work under the direction and control of the university as an [employee](#) unless the individual meets all of the independent contractor criteria established within this policy and provides the university with a valid federal taxpayer identification number (see the *Financial Services Policies and Procedures Manual*—[FIN 421–01](#), “Guest Lecturers, Consultants, and Other Independent Contractors”).

If the appropriate classification is in question, departments should classify the individual as an employee. If it is later determined that an independent contractor should have been paid as an employee, the university reserves the right to charge the department engaging the “independent contractor” for taxes and penalties, if any.

Note: Under certain conditions, the taxes and penalties may exceed 40 percent of the amount paid to the individual.

In order for an individual to be compensated as an independent contractor, the following four criteria must all be met:

1. The university does not control or direct the performance of the task; i.e., the individual is and will continue to be free to use whatever means he or she deems appropriate to accomplish the task
2. The task or service being performed is outside the regular expertise, duties, and/or consulting independence of existing university employees
3. The task is of short duration and is not indicative of an ongoing relationship (contractual relationships that are longer than 30 days, with very few exceptions, indicate that an employee/employer relationship rather than an independent contractor relationship exists)

and

4. A written agreement exists with the university that spells out the task or service(s) to be performed as required on the Employee/Independent Contractor Determination Checklist.

If the relationship between the university and the provider of the service or product does not clearly meet all of the consultant/independent contractor criteria above, the individual must be hired as an ASU employee. The Office of Human Resources (OHR) is available to consult with the department and to provide available options to employ the individual.

If the individual does not meet all four criteria based on the specific facts and circumstances, the department must prepare written justification for engaging the individual as an independent contractor and attach it to the [Employee/Independent Contractor Determination Checklist](#) when submitting it to Financial Services. Final determination to appoint the individual as an independent contractor will be made by Financial Services.

Exceptions

This policy does not cover businesses/corporations, guest lecturers of less than two weeks' duration, entertainers, or athletic officials functioning under Big 12, NCAA, or similar rules. These individuals/organizations can be hired as independent contractors without the above determination of independent contractor status.

Independent contractor payments of any amount cannot be made to university faculty and staff unless they are the result of competitive bidding. This requirement does not apply, however, to a corporation in which an employee has a substantial interest, so long as the corporation was not formed to avoid this requirement. If an employee has a substantial interest in the corporation, he or she must make that interest known to Purchasing and Business Services or the Office of General Counsel and must refrain from participating in any manner in such procurement.

Procedure

Responsibility	Action
	Before engaging services:
Department representative	1. Complete the Employee/Independent Contractor Determination Checklist appropriate for ASU at the Tempe, Downtown, Polytechnic, or West campus. Submit the form to Financial Services.
Financial Services	2. Determine whether a consultant/independent contractor or an employee-employer relationship exists.
	If not approved:
	3. Notify the department of disapproval and refer the department to OHR for options available to employ the individual by following the section "Recruitment Alternatives" in SPP 201-01 , "Recruitment/Employment."
	If approved:
	4. Sign the checklist and return it to the department representative. Note: For clarification, it may be appropriate to further document approval justification. 5.

Department representative	5. Prepare appropriate payment document (PV, RX, or Request for Check). Attach it to the checklist and the Departmental Professional Services Order (see FIN 421-01 in the <i>Financial Services Policies and Procedures Manual</i>). Forward the documents to Payables and Reimbursements .
Payables and Reimbursements	6. Review and approve for payment processing.

Cross-References

For further information on conflict of interest, see the *Academic Affairs Policies and Procedures Manual*—[ACD 204-08](#), “Conflict of Interest.”

For information on payments to nonemployees, see the *Financial Services Policies and Procedures Manual*—[FIN 421](#), “Nonemployee Payments.”