

Title/Subject: **INDEPENDENT CONTRACTORS**

Applies to:  faculty  staff  students  student employees  visitors  contractors

Effective Date of This Revision: December 1, 2018

Contact for More Information: Human Resources or Purchasing

Board Policy  Administrative Policy  Procedure  Guideline

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### **BACKGROUND:**

The IRS gives a high priority to the correct classification of employment relationships and the tax implications of decisions made. The IRS has expressed concern that employees are being misclassified as independent contractors and as a result, employers are failing to pay substantial amounts of employment tax. Both the university and the individual could be subject to penalties for improper classification of an independent contractor, including, but not limited to, back taxes, interest, and fines.

An employer does not withhold federal payroll taxes for an independent contractor (from U.S. individuals), including social security taxes, federal disability taxes and federal income taxes. The independent contractor does not receive unemployment benefits, workers' compensation benefits, or liability insurance protection from the employer, but he/she may sue the employer in ways not allowed by an employee. Although the independent contractor may receive larger direct payment for the work at the time it is performed, there are distinct disadvantages to both the University and the independent contractor that result from independent contractor status. Employment arrangements should be carefully examined to determine if the University has properly classified its workers as **employees** or **independent contractors**.

### **PURPOSE:**

The purpose of this policy is to provide hiring managers a basic understanding of IRS requirements and a procedure for ensuring that individuals hired or contracted to perform services are properly classified either as employees or as independent contractors. This policy does not control the process for contracting with corporations, partnerships, and limited liability companies which should be processed directly through Purchasing as contracts.

### **DEFINITIONS:**

**Employee:** According to the IRS, workers are considered employees if the employer they work for has the right to direct and control the way they work, including the details of when, where and how the job is accomplished.

**Independent Contractor:** According to the IRS, the general rule is that an individual is an independent contractor if the University only has the right to control or direct the result of the work and not what will be done nor how it will be done. Additionally, independent contractors are typically workers who are engaged in an independently established business, provide services outside of the university's usual course of business, experience a profit or loss, deliver the same type of service to multiple organizations, and are responsible for the payment of their own business expenses, general liability insurance and workers' compensation insurance.

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**POLICY:**

Individuals performing services for the University will be considered employees unless a determination is made in advance of any commitment for services that such individuals are appropriately classified as independent contractors. To make that determination, the university will adhere to the 20 common-law factors set forth by the IRS. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

The IRS does not recognize “honorarium” as a tax term; according to the IRS, an honorarium paid to an individual is considered taxable wages. The determination between employee and independent contractor is NOT determined based on the amount of money an individual is paid or what the payment is called.

This policy does not cover those situations where individuals are not paid (other than their actual expenses) to provide a service for a short duration (e.g. talking to a class, being a member of a discussion panel) and has a very limited potential for a liability claim against CMU. Actual expenses (with original receipts) may be processed through Payable Accounting for these individuals, without the requirement of entering into a contract.

If the individual provides a service that is an integral part of the university’s operations, he or she cannot be classified as an independent contractor.

CMU employees generally cannot provide other services to the University as independent contractors. In order for a CMU employee to qualify also as an independent contractor, the services they provide must be completely unrelated to their employment with the University, the responsibilities truly classified as independent contracting work and the department/employee must follow the Conflict of Interest Guidelines <https://www.cmich.edu/docs/default-source/president's-division/general-counsel/administrative-policy-docs/3/p03009.pdf> for Contracting with University Employees; otherwise, the employee must be paid supplemental assignment pay through the normal personnel and payroll procedures for the additional duties outside their normal responsibilities.

Minors (individuals under the age of 18) do not qualify as independent contractors. Minors cannot enter into legally binding contracts and cannot waive their liability rights.

CMU students generally will not be considered independent contractors.

Independent contractor determinations are subject to audits and the information provided will be made available to auditors and others as required. Departments may be assessed the amounts of withholding and social security taxes if it is later determined that a person was incorrectly classified as an independent contractor. For this reason, department hiring authorities are encouraged to coordinate in advance of any determination to engage an independent contractor with the office of Human Resources.

**PROCEDURE:**

A. Agreements with corporations, partnerships, and limited liability companies must be processed as contracts directly through Purchasing.

B. Individuals performing the following types of service will not need to be reviewed by Human Resources to determine independent contractor status provided the individual meets all requirements (a) through (e): (a) is NOT currently an employee of the University, (b) is at least 18 years of age, (c) is eligible to work in the U.S., (d) is eligible to be employed for CMU, and (e) is NOT an on-campus student.

1. Sporting Officials for Intercollegiate Athletic Events
2. Announcers and Commentators for Athletic Events
3. Professional Athletes
4. Persons paid to provide entertainment at an event

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5. Guest Speakers/Presenters/Workshop facilitators (who are clearly not teaching a course-and provide services for less than 5 consecutive days)
6. Academic Program Review Consultants (including accreditation team members)
7. Interpreters
8. External committee members (IRB, Dissertation)

The hiring department must still work with the individual to develop a contract. Once the contract is finalized and signed by both the independent contractor and a CMU employee with appropriate contracting authority, it must be submitted, along with an invoice voucher requesting payment, directly to Payable Accounting for processing. Purchasing and/or Payable Accounting may refer a contract or request for payment for persons falling into the above categories to Human Resources for review.

C. For all other types of services provided by an individual, the department must complete the process outlined below before utilizing the services of an individual contractor so that payment to the worker will not be delayed.

1. Departments should first consider the following two questions:
  - a. Does the university pay as employees others who perform essentially the same duties that are to be performed by this worker?
  - b. Has this worker previously been paid as an employee to perform essentially these same tasks?

If the answer to either question is yes, the person must be paid as an employee and the department should proceed to step 4, unless the individual is operating a bona fide sole proprietorship or single-member LLC, as determined by Human Resources.

2. The hiring manager must complete an Independent Contractor Questionnaire located on the Contracting & Purchasing Services website under forms ([https://purchasing.cmich.edu/cmu/forms/independent/ind\\_cont\\_faq.html](https://purchasing.cmich.edu/cmu/forms/independent/ind_cont_faq.html)). If the individual is to be paid from a sponsored project grant/contract, the questionnaire must have the approval of the Office of Research and Graduate Studies before it is forwarded to Human Resources for review. This form must be completed even in cases where payment is to be made to an individual's business (except if the business is a corporation, a partnership, or a LLC) rather than to the individual.
3. If it is determined by Human Resources that the individual qualifies as an independent contractor, the hiring manager must develop a contract for the Independent Contractor. The department should work with Contracting & Purchasing Services to develop a contract. Only a person with the appropriate contracting authority (<https://www.cmich.edu/docs/default-source/president's-division/general-counsel/administrative-policy-docs/3/p03007.pdf>) can approve the agreement with the independent contractor.
4. If it is determined by Human Resources that the individual qualifies as an employee, the hiring manager should complete the on-line personnel transaction form to hire the individual as a temporary employee.
5. Individuals hired as independent contractors must be legally eligible to work in the United States. Even though a foreign national person may work for another university/employer that **does not** make them eligible to work for Central Michigan University. If a contract is with a foreign national person, please contract Human Resources for instructions before services are rendered.

Central Michigan University reserves the right to make exceptions, modify or eliminate this policy. This document supersedes all previous policies, procedures and directives relative to this subject. Please refer questions or concerns to the Originating Department.