

Boise State University  
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BSU Policy #6150  
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## INDEPENDENT CONTRACTORS

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Purpose:

To provide guidelines for distinguishing between an employee and independent contractor to safeguard the University from potential liability related to incorrect classification.

Additional Authority:

Idaho Code §67-5726  
IRS Publication 15-A, Employer's Supplemental Tax Guide

Scope:

Applies to all individual service providers.

Responsible Party:

Tax Compliance Department, 426-1235  
Accounts Payable, 426-3101

Definitions:

Business entities - corporations, partnerships, limited liability companies, governmental agencies, and trusts.

Employee - an individual whom the University has the right to control and direct with regard to the work to be accomplished and the process by which the work is accomplished.

Employee Identification Number (EIN) - a unique nine digit number assigned by the Internal Revenue Service (IRS) to a business in the business entity's name. An EIN is similar to a social security number in that it is used by the IRS to identify a particular taxpayer, but EINs are used to identify business entities whereas a social security number is used to identify an individual.

Independent contractor - an individual who provides a highly technical or unique service or has a particular set of skills not available elsewhere in the University. Independent contractors typically have a separate workplace, are not supervised by a university employee, and are needed only for a short duration to complete a specific project.

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## POLICY

### I. Policy Statement

Significant tax and legal consequences including penalty assessments may result if an individual who meets the IRS's definition of an employee is erroneously treated as an independent contractor. The University may be audited at any time to determine appropriate identification and tax treatment of independent contractors. This policy is intended to ensure that independent contractors are appropriately classified as such.

## II. Overview

- A. The Internal Revenue Service presumes that all individuals who provide a service for an organization are employees unless there is substantial evidence to support the classification of the individual as an independent contractor. Therefore, if a University department wishes to engage an individual as an independent contractor, the department must supply the necessary information to support this classification.
- B. Using the guidance provided in this policy and the related checklist, the contracting department must determine whether the individual service provider is an employee or independent contractor. **This determination must be made before services are rendered or the individual will be classified and paid as an employee.**
- C. State law prohibits the University from retaining its current employees as independent contractors. Former state employees (including former university employees) cannot serve as independent contractors and provide services related to their previous jobs absent approval from the Tax Compliance Department. If such approval is granted, the independent contractor may not begin performing services for at least thirty days after his/her last day of employment.
- D. Business entities will be classified as independent contractors if they provide the University with a valid EIN. When paying a business entity, checks issued by Accounts Payable will be paid to the order of the business entity.

## III. Classification

- A. When determining whether an individual is an employee or independent contractor, the relationship between the individual and the University must be examined. In making the determination, any information that provides evidence of the degree of behavioral and financial control and independence must also be considered.
  - 1. Type of relationship – facts that show the parties' relationship include:

- i. The written contract or agreement describing the relationship the parties intend to create;
  - ii. Whether the University will provide the individual with benefits including insurance, retirement plan contributions, vacation or sick pay (typically provided only to employees);
  - iii. The permanency of the relationship (independent contractors are usually retained for a defined term); and
  - iv. The extent to which services performed by the worker are a key aspect of the University's regular business activity (independent contractors are usually retained to handle irregular or specialized tasks or projects).
2. Behavioral control – facts that show whether the University has a right to direct and control how an individual completes a task for which the individual is retained include (greater University control suggests the individual is an employee):
  - i. The instructions the University gives the individual about how, when and where to work, what tools or equipment to use, what workers to hire or use to assist in the work;
  - ii. Where to purchase supplies and services to complete the work; and
  - iii. What order or sequence to follow to complete the work.

A key consideration is whether the University has retained the right to control the details of the individual's performance or has given up that right. With an independent contractor, the university typically gives up that right and defers to the contractor's expertise.

3. Financial control – facts that show whether the University has the right to control financial aspects of the individual's work include:
  - i. The extent to which the individual has unreimbursed business expenses (independent contractors typically cover their own expenses);

- ii. The extent of the individual's investment (an independent contractor often has a significant investment in the facilities and equipment he or she uses to perform the work);
- iii. The extent to which the individual makes his or her services available on the open market (an independent contractor often advertises and seeks business opportunities in the market on an ongoing basis); and
- iv. The manner in which the University pays the individual (an independent contractor usually earns a flat fee for the job).

#### IV. Procedures

Please see <http://vpfa.boisestate.edu/accounts-payable/independent-contractors/> for the requisite paperwork and procedures.