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Effective
September 1, 2008

Last Updated
March 26, 2018

Last Reviewed
August 31, 2016

Responsible University Officer
Director of Systems and Operations

Responsible Unit
Systems and Operations
Policy Statement

An individual who is engaged by the University to provide a service could be considered an employee or an independent contractor. The independent contractor is subject to the direction or control of the University only as to the end result, not as to the methods and means used to accomplish that result. The determination that an individual is an independent contractor is to be made prior to the individual's performance of service. Originating departments are to seek confirmation of independent contractor status from Disbursement Services prior to making any employment commitment or preparing any payment vouchers. Effective July 1, 2014, a new process for independent contractor hiring includes background checks (See University of North Carolina at Chapel Hill Procedure 708.1 - Independent Contractor Predetermination Process, Related Data Item 708.1.1rd – Domestic Vendor Independent Contractor Workflow Process and Related Data Item 708.1.2rd – Foreign Vendor Independent Contractor Workflow Process.

To ensure compliance with tax laws, independent contractors will be issued a Federal tax Form 1099-MISC by January 31 of the year following their service if they were paid at least $600 in the prior calendar year. In some instances, the independent contractor payment might be subject to tax withholding (see University of North Carolina at Chapel Hill Policy 707 - NC Income Tax Withholding Requirements for Non-Wage Compensation Paid to Nonresidents).

In order for an individual to be determined to be an independent contractor, an employer/employee relationship must be judged not to exist based on Internal Revenue Service guidelines. These guidelines provide three main categories and patterns of behavior and financial control.

Behavioral Control: Facts which illustrate whether there is a right to direct or control how the worker performs the specific task for which he/she is hired (i.e., providing instruction or training).

Financial Control: Facts which illustrate whether there is a right to direct or control how the business aspects of the worker's activities are conducted (i.e., significant investment, unreimbursed expenses such as rent and utilities, advertising, wages of assistants, licensing, insurance, supplies, etc.).

Relationship of Parties: Facts which illustrate how the parties perceive their relationship (i.e., employee benefits, intent of the parties, written contracts, permanency, discharge/termination, integration into regular business activities.

Reason for Policy

The determination of the correct classification of worker as employee or independent contractor is significant to the University because an incorrect determination could result in the following:

1. Loss of reimbursement under Federal contract and grant funds;
2. Penalties for violation of State and Federal tax withholding laws;
3. Penalties for violation of Federal laws pertaining to the employment of aliens;
4. Penalties for failure to provide workers’ compensation and unemployment insurance coverage.

Exclusions

A person already hired as a permanent, full-time employee of the University or any other State agency cannot be an independent contractor.
Special Situations

1. A temporary employee of a state agency who performs a service for another state agency:

If a temporary employee of another state agency [with a different EIN (Employer Identification Number) other than UNC-Chapel Hill] contracts to do similar work for the University, depending on the existence or lack of existence of an employer/employee relationship as determined by the facts of the University's relationship with the individual, the individual may be considered a temporary employee versus an independent contractor.

2. Re-employment of a former University employee:

University departments may not engage an individual as an independent contractor if they have worked as a permanent, full-time or part-time employee for the State of North Carolina (including UNC-Chapel Hill or any other UNC System campus) within the past 12 months (365 calendar days). An exception is made if the services they will perform for the University as an independent contractor are substantially different from those services that they performed for the University or any other State agency as an employee within the past twelve months. For this purpose, substantially different means that the expertise used and duties performed as an independent contractor may not be related or similar to that which the individual performed as an employee.

Direct hire temps in which Social Security and Medicare taxes have been withheld are considered employee of the University for IRS independent contractor determinations.

Procedures

- 708.1 - University of North Carolina at Chapel Hill Procedure on Independent Contractor Predetermination Process
- 708.2 - University of North Carolina at Chapel Hill Procedure on Paying an Independent Contractor

Related Policies

Policy 1302 - Statutory Provisions and Maximum Rates for Travel

Frequently Asked Questions

Q. Are independent contractors obligated to follow state travel policies relating to per diem rates and lodging?
A: Yes, independent contractor service agreements require that State travel policies for per diem and lodging rates are followed. See Policy 1302 - Statutory Provisions and Maximum Rates for Travel.

Q. A permanent or direct hire temp employee is a former accountant for another division and our department is in desperate need of accounting personnel with University experience. She terminated her employment December 31, which was three months ago. She has indicated that she would be willing to work part-time for our department if we pay her as an independent contractor. Is this possible?
A. No. The break in employment must exceed 365 calendar days if she is doing the same type of work she did before.

Q. A former departmental finance employee has retired and opened a catering business. May we use his/her services for an event we will be hosting in two weeks? The former employee has been gone for six months. Can he/she be employed as an independent contractor for the event?
A. Yes. Providing catering services to the public is significantly different than performing financial services for the department.

Q. Professor Smith had a party and paid a piano player to provide entertainment for the event. He is now requesting reimbursement for this expense. Is this possible?
A. No, the piano player is considered an independent contractor and must be paid directly by the University to ensure all tax obligations are met.

Q. Is a single-member LLC an independent contractor?
A. Yes. An LLC can be one of four types – 1) a single-member, 2) C corporation, 3) S corporation, or 4) P partnership. If the LLC is a single-member LLC, they are an independent contractor and UNC will issue form 1099. Single member LLCs can use either their social security number or an employer identification number (EIN) for tax reporting and form 1099.

Q. How do I know which type of LLC I am proposing to employ?
A. View the W-9 submitted by the potential independent contractor. The W-9 requires the potential independent contractor to identify themselves as a specific type of LLC. See form W-9 at this link: https://www.irs.gov/pub/irs-pdf/fw9.pdf. LLCs that are C corporations, S corporations, or P partnerships are not independent contractors. Those potential vendors should be regular vendors and a purchase order is necessary for amounts over $5,000.

Q: Are photographers and videographers considered independent contractors?
A: Yes. Photographers and videographers work with sensitive information, and are considered independent contractors.

Q: I am a new employee. How do I gain clarification on questions I have about independent contractors?
A: Reach out to the Independent Contractor Review Agent at ic_review@unc.edu.

Related Data
The twenty item criterion used by the Internal Revenue Service to make employee status determinations can be reviewed on the Independent Contractor checklist at https://financepolicy.unc.edu/708_1_1f.

Internal Revenue Service Publication: Independent Contractor or Employee.
North Carolina Department of Revenue Publication: Frequently Asked Questions about Withholding from Nonresidents for Personal Services Performed in North Carolina

Contacts

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History
Revised:
March 26, 2018: Added FAQ about per diem rates and lodging compliance as per Independent Contractor service agreements.
October 17, 2017: Added the FAQ on hiring photographers and videographers. They must be hired as independent contractors. April 18, 2017: Exclusion period for background check requirement for independent contractors extended from seven (7) days or less to ten (10) days or less of work.
September 09, 2016: Updated related documents 708.1.1rd and 708.1.2rd.
August 31, 2016: Added two FAQs regarding LLCs.
June 30, 2014: Revised information on background checks.
March 31, 2014: Revised information in Policy Statement about background check and revised Contacts section.
May 20, 2013
August 23, 2010


Attachments: No Attachments

Approval Signatures

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<td>Publication by Office of Ethics and Policy</td>
<td>Matthew Teal: University Program Specialist</td>
<td>3/26/2018</td>
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<td>Finance Communications Office</td>
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