



Guidelines for Determining Independent Contractor vs. Employee Status for External Service Providers Performing Services within the United States.

Effective Date: July 1, 2011

Purpose

Federal and state tax and labor laws require Boston University to ensure that each external service provider is properly classified as an employee or independent contractor. Proper classification of a service provider determines the University's tax withholding and reporting obligations and the appropriate system (payroll or accounts payable) from which the individual should be paid. Misclassification of employees as independent contractors results in a failure to withhold and remit income and employment taxes and exposes the University to IRS assessments of tax penalties and interest, as well as civil and criminal penalties under Massachusetts law. University Departments that engage external service providers must submit the required documentation for determination of a service provider's status before any services are performed or payment requests are processed.

All individuals who perform services for the University are presumed to be employees unless the relationship satisfies Internal Revenue Service (IRS) and state law standards for independent contractor status. These guidelines apply to payments to individuals and sole proprietors (including single member LLC's) for services. The guidelines do not apply to payments made to a corporation for an individual's services or to payments for the purchase of goods/merchandise.

For similar guidance on individuals performing services outside the United States, please contact the Office of Global Programs, globalops@bu.edu.

Stakeholders

- All faculty and staff who engage individuals to perform services, process transactions related to the services and/or authorize payments
- Office of Sourcing and Procurement
- Office of Human Resources
- Office of Sponsored Programs
- Post Award Financial Operations
- Accounts Payable Department
- Payroll Department

Definitions

A glossary of key terms used in these guidelines that have specialized meaning.

Term	Definition
External Service Provider	Term used for any individual who performs services for the University before a determination has been made as to whether the individual is an employee or independent contractor.
Employee	A person hired through the Office of Human Resources and paid via payroll. The University controls and directs the external service provider's activities, both in terms of what must be done and how it must be done. An employee may be classified permanent full-time or part-time. In certain instances, an employee may be classified as a temporary employee.
Independent Contractor	Also commonly referred to as: contractor, consultant, freelancer, etc. Independent Contractors are individuals, sole proprietors (including single member LLC's), partnerships, corporations, etc. which render services to the general public. Independent Contractors are responsible for the means and methods for completing a task based on specifications in a contract with the University. Contractors generally have multiple clients, maintain a separate workplace and are not supervised or controlled by University employees. Independent Contractors do not receive University benefits.

General Statement of Procedures

The procurement of services requires an evaluation of whether an external service provider should be classified as an employee or independent contractor. **In order to avoid a delay in payment, this evaluation and classification must be performed *before* engaging an individual to perform services so that the University can comply with its tax withholding and reporting responsibilities.** The primary difference in these two business relationships is that employees are paid through payroll and the University must withhold income and employment taxes, while an independent contractor is paid via accounts payable without tax withholding. The evaluation must be based upon IRS guidance, not administrative ease, budget constraints or funding guidelines.

General Statement of Procedures - continued

Individuals who perform services for any University Department are presumed to be employees of the University unless the relationship satisfies IRS and Massachusetts standards for independent contractors. In general, an independent contractor is engaged where the type of services needed are urgent, special, temporary, or highly technical and cannot be performed economically or satisfactorily by University staff members within the scope of their normal University responsibilities.

University Departments will initiate the classification of an individual as a contractor or employee and will document those decisions by completing and having the individual complete the External Service Provider Pre-Qualifying Questionnaire. The Accounts Payable Department will review the documentation submitted and the basis for the decision. The Comptroller will review situations that are unclear or need a secondary review.

Faculty and staff hiring individuals to perform services are encouraged to complete the following process in advance so that payment to the individual will not be delayed:

Step 1: Determining Correct Classification

The IRS and the Massachusetts Attorney General have provided guidance for determining an external service provider's classification and the primary term used to distinguish the business relationship with the University is "control". The more control the University has over the individual and the work product, the more likely the individual will be deemed an employee. The IRS currently emphasizes three broad categories: behavioral control, financial control, and the overall relationship.

Behavioral Control – An independent contractor determines how he or she will accomplish the task. He or she completes the job using his or her own approach with little direction and dictates the hours that he or she will work on the job. If the University provides training and/or instructions about how to complete the task, the external service provider should generally be classified as an employee.

Financial Control – An independent contractor has a significant investment in his or her business and can make a profit or loss due to expenses they incur, such as tools, materials, equipment and supplies needed to run the business. Contractors make their services available to the public and have a broad customer base. They do not depend on a single employer for the continuation of their services. If the external service provider works primarily for the University, the external service provider should generally be classified as an employee. Contractors are generally paid a fixed fee based on specific tasks identified in a contract.

Relationship – If the University engages an external service provider for an indefinite period, rather than for a specific project or period, this is evidence of an employee relationship. In addition, if the services performed by the external service provider are a key aspect of the University's core business (e.g. teaching), this is another indicator of an employee relationship. In other words, the service provider must provide services that are outside the University's usual course of business.

In addition to the control concepts identified above, there are three basic questions that will assist in determining the correct classification:

a. Will the worker teach a for-credit course?

General Statement of Procedures - continued

- b. Does the University pay others as employees who perform essentially the same duties that are to be performed by this individual?
- c. Has this individual previously been paid as an employee to perform essentially the same task?

If the answer to any of these questions is yes, then the individual in question should be treated as an employee and the Department should proceed by hiring the individual for payment via payroll.

If the relationship with the individual is unclear after analysis of the External Service Provider Pre-Qualifying Questionnaire, the Department should contact the Accounts Payable Department for assistance. In most cases, if a situation is unclear, the individual in question should be treated as an employee.

If an individual is determined to be treated as an employee, the Department may move forward with a normal hiring process and should contact the Office of Human Resources for guidance and assistance.

If the individual is determined to be treated as an independent contractor, then the Department should move on to Step 2.

Step 2: Completing the Necessary Forms

In order for an individual to be paid as an independent contractor, the following forms must be submitted to the Accounts Payable Department:

- a. External Service Provider Pre-Qualifying Questionnaire
- b. Form W-9
- c. Copy of the contract describing services to be performed

The Departmental employee *directly responsible for the review and approval of the work to be performed by the external service provider* should complete Part 1 of the External Service Provider Pre-Qualifying Questionnaire and have the external service provider complete Part 2 of the Form. Certifications by clerical staff and others with insufficient knowledge of, or responsibility for, the specific work to be performed are not acceptable.

Supporting documentation may be requested in order to complete the review of independent contractor status. The following documentation provided by the individual strengthens the case for contractor status: client list, copies of general advertisements, brochures, business cards, letterhead, website address, or list of qualifications/experience to substantiate their independence.

Step 3: Final Determination

The University will presume that every individual hired to perform services is an employee unless the IRS threshold for contractor status is met.

The Accounts Payable Department will review all transactions where an individual has been named as an independent contractor rather than an employee. When there is agreement with the Department's determination, the transaction will be processed as requested.

When there is disagreement, appropriate consultation will be held with the Comptroller. The judgment of the Comptroller is final.