

Sam Houston State University
A Member of The Texas State University System

Finance & Operations Human Resources Policy WS-3
Contract Labor and Independent Contractors

SUBJECT: Determining Contract Labor and Independent Contractor Status

PURPOSE: To provide an explanation and clarification of contract labor considerations and to establish guidelines for distinguishing between staff or faculty employees and independent contractors.

POLICY: It is the policy of Sam Houston State University that all independent contractors providing services to the University be properly classified and compensated based on their contract labor status, and that their classification as independent contractors be closely evaluated and monitored to verify eligibility for non-employee status. All personnel actions are reviewed to ensure Equal Employment Opportunity (EEO) compliance.

CONTENTS:

1. Internal Revenue Service
2. Fair Labor Standards Act
3. Texas Workforce Commission
4. Legal Considerations
5. Procedure

1. **Internal Revenue Service (IRS)** – The IRS uses three (3) categories to determine whether an individual is a “common law” employee or an independent contractor:
 - a. Behavior Control – facts that show whether the university has a right to direct and control how the worker does the task for which the worker is hired.
 - b. Financial Control – facts that show whether the university has a right to control the business or financial aspects of the worker’s job.
 - c. Type of Relationship – these relationships include those established by written contract, whether the university provides the worker with employee-type benefits, the permanency of the relationship, and the extent to which services performed by the worker are a key aspect of the regular business of the university.
2. **Fair Labor Standards Act (FLSA)** – The FLSA defines an independent contractor as anyone who passes the “economic reality test.” This test determines whether an individual is economically dependent on the university for support or is, as a matter of economic fact, in business for him or herself. The courts focus on six (6) factors to apply this test. These are the factors that the university must consider in order to determine whether an individual is an employee or independent contractor:
 - a. The extent to which the worker’s services are an integral part of the university’s business.
 - b. The permanency of the relationship.
 - c. The amount of the individual’s investment in facilities and equipment.
 - d. The nature and degree of control by the university.
 - e. The opportunities for profit and loss.

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- f. The level of skill required in performing the job and the amount of initiative, judgment, and foresight in open market competition with others required for the success of the claimed independent enterprise.
3. **Texas Workforce Commission (TWC)** – The TWC presumes that anyone who provides services for the university is an employee until the university proves that it has no right to exercise direction or control over the work performed.
4. **Legal Considerations** – The IRS has the authority to assess penalties for failure to file employment taxes. The Department of Labor and the courts have the authority to determine whether individuals are employees or independent contractors in disputes over the applicability of overtime provisions of the FLSA and to grant back pay as required. The TWC conducts audits of employer accounts to ensure compliance with the Texas Unemployment Commission Act. The TWC has the statutory authority and legal obligation to determine whether individuals are employees or independent contractors and to assess back taxes, penalties, and interest as required.
5. **Procedure** – Departments are highly encouraged to contact Human Resources, Payroll, or Disbursements when assistance is needed for making a determination about payments to independent contractors. Generally, payments to individuals are processed through the Payroll Department as an employee payment unless instructed otherwise by Human Resources, Payroll, or Disbursements personnel.

Reviewed by: David M. Hammonds, Associate VP for Human Resources & Risk Management-03/29/2013
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