

INDEPENDENT CONTRACTOR POLICY AND PROCEDURES

MARCH 2021



CLARK
UNIVERSITY



Independent Contractor

- An Independent Contractor (IC) is generally an individual who is in an independent trade, business, or profession and offers services to the general public.
- A worker's preference is not relevant to the classification determination, nor is that of the department engaging the individual.
- In MA, an IC must meet a three-part test:
 - Free from day to day control
 - Services must be outside the University's usual business
 - IC must offer services to other clients/customers



IC versus Employee

Employee

- Paid through payroll with W-2 at year end
- Wage and hour requirements
- Payroll tax withholding
- Workers compensation
- Unemployment benefits
- Other employee benefits

Independent Contractor

- Paid through AP with 1099 at year end
- Responsible for tax reporting and payments
- Not covered by University benefit plans or workers compensation plans
- Not eligible for unemployment

The consequences of misclassifying workers as ICs instead of employees may cause the University to fail to meet its legal obligations and give rise to significant liability, including taxes and related penalties, criminal sanctions, and civil liability.



Responsibilities

- **Human Resources** - responsible for maintaining this Policy and acting as a resource for questions regarding this Policy. It is also responsible for reviewing IC classification decisions.
- **Department** - responsible for initiating the required procedures and must either secure proper review and approval of an IC engagement or confirm that an exception to the ICQ requirement applies, **before a contract is signed or any services are performed.**
- **Requestor in Smart Buy Plus** - responsible for completing required documentation that supports the IC classification decision **before a vendor is created in the Accounts Payable system or any payment is issued.** Required documentation includes a signed contract, an approved ICQ (if required), and an invoice.

Required Steps and Documents



Step 1: Initiate a Vendor Request for Individual in Smart Buy Plus

- Follow the instructions on this form, and attach required documentation
 - ✓ W9
 - ✓ Vendor Information Form
 - ✓ Draft Contract or scope of services (final contract should not be signed until approved)
 - ✓ Independent Contractor Questionnaire (**ICQ**) (if necessary) - Unless an exception applies, this questionnaire must be completed and attached when submitting the Vendor Request form in Smart Buy Plus.

Required Steps and Documents



Step 2: Human Resources Reviews the ICQ

- HR will review the ICQ to determine if the worker should be:
 - ✓ Engaged as an IC;
 - ✓ Hired as an employee (regular, term, or temporary); or
 - ✓ Hired as an employee by an outside entity (such as a temp agency, staffing firm, or payrolling service) and assigned to perform services at the University.
- **The department must receive HR approval of the classification of a proposed independent contractor before a contract is signed and before any work is performed.** If HR classifies the individual as an independent contractor, proceed to Step 3. If not, the department should work with HR to determine the best way to proceed.

Required Steps and Documents



Step 3: Department Completes and Signs Contract

- If the engagement is approved as a permissible use of an IC, then the department must complete a contract with the IC ***before any services are provided.***
- Contracts must include detailed services to be performed, deliverables, contract term, payment amount and schedule, and clause regarding the use of the University's name and ownership of work.
- The contract with the IC must (at a minimum) contain the language included in the sample IC consulting/services contract included in Appendix B of the ICP.



Required Steps and Documents

Step 4: Create Purchase Order in Smart Buy Plus

- When creating the Purchase Order, follow the instructions in Smart Buy Plus and attach a copy of the signed contract.

Step 5: Submit for Payment

- Invoices must be sent to Accounts Payable (apayables@clarku.edu), and the department must complete a receipt in Smart Buy Plus to document that the services have been rendered as agreed.

Payment by AP is the only acceptable method of payment for independent contractors. IC services should not be paid via out-of-pocket reimbursement or by using a Corporate credit or P-Card.



Exceptions to the ICQ Requirement

- Under the following circumstances, an ICQ is not required:
 - Guest speakers, Lecturers, Facilitators, Panelists, or Performing Artists
 - ✓ Does not include individuals teaching or co-teaching a course
 - Single, Short-Term Engagements for less than \$5,000
 - ✓ Lasts no longer than 90 days; and
 - ✓ Total payments will not exceed \$5,000
- The department must still ensure that the classification satisfies the three-part IC test set forth above, and a written contract is still required.

Questions?



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