

## Engaging Independent Contractors Frequently Asked Questions

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Q: What is an EIN?

A: An EIN is an Employer Identification Number. It is a Taxpayer Identification Number for businesses, much like a Social Security Number is for individuals.

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Q: The Independent Contractor does not have an EIN, can he or she use a Social Security Number?

A: If cumulative payments to the independent contractor from the University during the current calendar year are less than \$600, the independent contractor may use a SSN. If payments have or are expected to be \$600 or more during the current calendar year, the Independent Contractor must provide an EIN.

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Q: The independent contractor does not have and does not want to get an EIN, can we force him or her to have one?

A: We cannot force the independent contractor to have an EIN, but we won't use them as an independent contractor if they don't have an EIN and cumulative payments to them are expected to be \$600 or greater during the calendar year.

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Q: The independent contractor is a sole proprietor without employees and does not think he or she is allowed to have an EIN by the IRS. Is that correct?

A: There is some explanation on the IRS' website that does explain the IRS does not require a sole proprietor without employees to use an EIN. The IRS' website also explains that they are still allowed to have and use one if they want to.

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Q: What are the benefits or complications to the independent contractor of having and EIN?

A: Getting an EIN from the IRS is free and takes only a few minutes online or on the phone. It does NOT cause the independent contractor to file an additional tax form or schedule. Payments are still reported to the independent contractor on Form 1099 by the University and are reported on the independent contractor's personal income tax return the same way. Beyond the few minutes it takes to get the EIN, there is no additional impact on the independent contractor.

Having an EIN allows the independent contractor to use it with clients instead of his or her SSN, which protects the independent contractor from some of the risk of identity theft.

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Q: If the IRS doesn't require an EIN for some independent contractors, why does the University?

A: In audits or reviews of whether a person is an independent contractor or employee, one factor both the IRS and Department of Workforce Services often ask is if the person had and used an EIN. If the University engages a service provider as an independent contractor, it is in our interest to ensure as many factors in the engagement support that classification.

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Q: The independent contractor gave me his or her SSN/EIN over the phone or through email, do we need to have it on a W-9?

A: It is in the University's interest to have a SSN or EIN provided on a W-9 as a W-9 requires the independent contractor to certify that is his or her number and substantiates that the University has good reason to accept it as such.

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Q: Our department has its own contract we have always used for independent contractors. Can we use that instead of the long or short form?

A: Any contract other than the long or short form may be used if it has been reviewed and approved by University counsel.

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Q: The independent contractor did not provide an invoice, can I process payment without one?

A: For the bolded Fast Track Categories (ICO 7950, 7951, 7952, 7953, 7954, 8993, 8995, and 8997) an invoice is required to process payment.

For services under ICO 8997, independent contractors (including speakers, lecturers, guest instructors, and symposium, colloquium, and practicum presenters, or honorarium recipients) who will be engaged by the University for 5 days or fewer in the previous 12 months, will not be required to have an invoice, contract, or EIN. However, if these independent contractors will be engaged by the University for 6 days or more in the previous 12 months, including the current visit, they will be required to have an invoice, contract, and EIN.

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Q: I engage a specialized service or repair technician as an independent contractor as needed (such as fixing specialized machinery when it breaks down or musical instruments), do I have to have a signed a contract every time we need him or her to come out?

A: No. You can execute a contract that provides for the rate of pay per visit as needed by modifying the "Description of Work" and "Payment and Work Schedule" portions of the long form contract. Such an on-call contract can be executed for up to one year at a time.

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Q: There is a University employee who offers services unrelated to his or her employment at the University to the general public. Can I pay him or her as an independent contractor?

A: The policy is that any current or recent University employee who provides additional services beyond his or her employment responsibilities for additional compensation is to be paid through University payroll, using a supplemental compensation form. If the employee providing the services would rather be paid as an independent contractor, the employee must petition to become an approved employee-vendor through HR and Purchasing.

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Q: I processed a Fast Track for payment and it was denied and I was told the person had to be paid as an employee. This will delay the payment. Why can't we pay them as we promised?

A: Before engaging an independent contractor, allowing him or her to perform services, and committing to pay him or her, the independent contractor and engagement must be approved by HR. This prevents us from committing to invalid arrangements and allows the proper paperwork to be completed ahead of time. That will then allow prompt payment through the system when it is due.

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Q: Even though I didn't have the engagement approved as I should have, the work has been done and now I am told I have to pay the person as an employee. We have a contract as an independent contractor, is it legal to change that to an employee?

A: Yes. It is illegal to pay someone who is properly classified as an employee as an independent contractor. The contract with the person cannot change Federal and State law and regulations and would be considered invalid if it conflicted with the law. The University is committed to paying service providers properly as required by law.

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