



Ohio Administrative Code

Rule 3342-6-04.3 Administrative policy regarding independent contractors.

Effective: March 1, 2015

(A) Purpose and scope. The purpose of this policy is to prescribe guidelines for obtaining the services and compensating an independent contractor at Kent state university under the conditions established by the IRS. It is the intent of university to classify individuals as independent contractors only when there is a reasonable basis for such determination.

(B) Eligibility.

(1) Individuals classified as independent contractors are not eligible for any employee benefits, are not covered by workers compensation, and pay for services is not subject to income tax withholding.

(2) Individuals who are currently employed with Kent state university may not be paid as an independent contractor.

(3) Individuals who have been employed with Kent state university may not be paid as an independent contractor in the same calendar year that they were an employee holding the same position, with the same duties.

(C) Definitions.

(1) Independent contractor An individual who performs a service for the university, but is free from immediate control or direction in the performance of his or her work under a contract of service.

(a) Independent contractors usually have a skill or area of expertise not available within the university, and the need for their services commonly does not extend beyond a limited period of time in which to complete a defined project.

(b) As a general rule, the university has the right to control or direct only the result of the work done by an independent contractor, and not the means and methods of accomplishing the result.



(c) Independent contractors are further defined by the following criteria:

(i) No instructions. Independent contractors are not required to follow, nor are they furnished with, instructions to accomplish a job.

(ii) No training. Independent contractors typically do not receive training by the university. They use their own methods to accomplish the work, but may have to use a university system to complete their work.

(iii) Others can be hired. Independent contractors are hired to provide a result and may usually have the right to hire others to do the actual work.

(iv) Independent contractor's work is not essential. The university's success or continuation should not depend on the service of outside independent contractors.

(v) No time schedule. Independent contractors set their own work hours and schedule.

(vi) No permanent relationship. Independent contractors do not have a continuing relationship with the university. The relationship can be frequent, but it must be at irregular intervals, on call, or whenever work is available.

(vii) Independent contractors control their own employees. Independent contractors should not hire, supervise, or pay assistants per the direction of the university. If assistants are hired, it should be the decision of the independent contractor.

(viii) Other jobs. Independent contractors should have enough time available to pursue other gainful work.

(ix) Location. Independent contractors control where they work. If they work on the premises of the university, it is for convenience and not under the university's direction or supervision.

(x) Order of work. Independent contractors determine the order and sequence in which they will



perform their work.

(xi) No hourly pay. Independent contractors are paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of job completed. Payment can be based on the number of hours needed to do the job times a fixed hourly rate. Payment method should be determined before the job commences.

(xii) Multiple firms. Independent contractors often work for more than one firm at a time.

(xiii) Business expenses. Independent contractors are generally responsible for their own business expenses.

(xiv) Significant investment. Independent contractors should be able to perform their services without the university's facilities (equipment, office furniture, machinery, etc.). The independent contractor's investment in their trade must be real, essential, and adequate.

(xv) Services available to the public. Independent contractors make their services available to the general public by one or more of the following: having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(xvi) Profit or loss possibilities. Independent contractors should be able to make a profit or a loss. Employees cannot suffer a loss. Five circumstances show that a profit or loss is possible: the independent contractor hires, directs, and pays assistants; the independent contractor has his own office, equipment, materials, or facilities; the independent contractor has continuing and recurring liabilities; the independent contractor has agreed to perform specific jobs for prices agreed upon in advance; and the independent contractor's services affect his own business reputation.

(xvii) Termination. Independent contractors contractual agreement cannot be terminated, "ex post facto", so long as they produce a result which meets the contract specifications.

(D) Responsibility.



(1) Requesting department.

(a) The requesting department representative must initiate the completion of the "Independent Contractor Determination Form" and will forward all documentation to human resources for approval.

(b) The requesting department representative is responsible for obtaining any supporting documentation (i.e. contract), and attaching it to the independent contractor determination form.

(c) An independent contractor working arrangement will not be commenced or entered into, without approval from human resources.

(2) Independent contractor.

(a) The independent contractor will furnish the university with all applicable employment information.

(b) A contractual agreement will be drawn by the university that will outline the expectations of the university for the assignment that the independent contractor will undertake.

(c) A confidentiality agreement will be signed by the independent contractor provided by the university.

(3) Human resources and general counsel.

(a) Human resources, in consultation with general counsel, will approve or deny requested independent contractor employment agreements.

(b) The office of procurement will be contacted when an independent contractor employment arrangement has been approved.

(4) Accounts payable.



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(a) Accounts payable will be notified by human resources should an independent contractor relationship be established.

(b) The requesting department shall work with accounts payable to ensure all documentation is completed.