

 <p>Category: Financial</p> <p>Policy applicable for: Faculty/Staff</p>	<p><i>Policy Title:</i></p> <p>Payments to Individuals for Services</p> <p>Effective Date: xx/xx/xxxx</p> <p>Prior Effective Date: 03/11/2011, 01/01/2009</p> <p>Enabling Acts: IRS Higher Education Act, Title IV</p>	<p><i>Policy Number:</i></p> <p>2.3.1</p> <p>Policy Owner(s): Sr. VP for Administration and Finance</p> <p>Responsible Office(s): Accounts Payable Human Resources Purchasing Tax Compliance</p>
--	--	---

Background

This policy concerns engaging individuals other than unpaid volunteers to provide services to the university. This policy is intended to facilitate efficient and flexible business practices, while also effectuating appropriate fiscal control, and compliance with federal and state laws and regulations.

The proper classification of individuals as employees or independent contractors under a personal services contract or a limited services engagement form, or through a payrolling or temporary agency is critical to ensure that the individuals are compensated correctly in accordance with federal, state, local and foreign laws, and that the university correctly fulfills its legal obligations in paying those individuals. Those obligations may include a requirement to withhold taxes or other amounts from the individual's gross pay, to pay any necessary or appropriate payroll taxes, and to report to various tax authorities the annual amounts paid and taxes withheld.

The proper classification of individuals as employees or independent contractors is also critical to ensure that the individuals receive, or do not receive, university and State of Ohio benefits, including retirement, according to the work the university has asked the individual to perform. Proper classification also helps the university maintain consistent and effective compensation practices and ongoing compliance with collective bargaining agreements.

In the case of foreign nationals, the proper classification of individuals ensures compliance with Department of Homeland Security, Department of State, Department of Labor and export control regulations.

Individuals are not paid for services using Purchase Orders, Term Contract Releases, Small Dollar Invoices, P-Card expenditures, or Travel Expense Reports, unless otherwise explicitly identified in this policy.

Policy

The university shall retain and compensate the services of an individual only through the following means: as an employee of the university, an independent contractor, or an employee of a payrolling or temporary agency. While these guidelines provide assistance to university personnel, the Tax Compliance and Human Resources offices

are authorized to make final determinations as to whether an individual in any given circumstance should be retained as an independent contractor or as an employee.

Compensation, as used in this policy, refers to earned amounts provided to an individual in exchange for their services to the university. Compensation includes not only cash compensation paid through Accounts Payable (via A114) or other regular university payment methods, but also includes cash compensation paid through other methods, “gift cards” and noncash forms of compensation such as tickets to athletic events.

Compensation, as used in this policy, does not include travel or other business expenses incurred by an individual, if those expenses are paid or reimbursed by the university in accordance with applicable financial policies.

No individual shall be retained – whether as an employee, as an independent contractor under a personal services contract or a limited services engagement form, or through a payrolling or temporary agency – and compensated on a commission basis to recruit students, unless the Senior Associate Vice President for Enrollment Management approves and, in consultation with the Office of General Counsel, concludes that the compensation complies with applicable law, including Title IV of the Higher Education Act.

In all cases, before engaging an individual to provide services, the organizational unit should review any applicable collective bargaining agreement, or consult with the applicable contract administrator, to ensure that contracting with the individual in some role other than as an employee is permissible under the agreement.

Payments made to independent contractors are recorded in the university accounting system.

The university shall retain an individual as an **EMPLOYEE** if the following conditions are generally met:

- The university has the right to direct and control the individual’s methods of completing his or her tasks.
- The work is described in a university job description.
- Office space, tools and equipment are provided by the university.
- Working hours and/or location are controlled by the organizational unit.
- The university provides the individual with training about required procedures and methods of completing his or her work.
- The organizational unit is responsible for discipline.
- Services to be performed are being performed by, or would normally be performed by, persons in employee roles within the university.
- The individual is providing a core service to the university’s mission, such as teaching or research.
- The individual will be reimbursed for expenses.

If the individual will meet some, but not generally meet all, of the foregoing criteria, the organizational unit should seek the advice of Tax Compliance or Human Resources.

The university may retain an individual as an independent contractor under a **PERSONAL SERVICES CONTRACT** if all of the following conditions are met:

- The individual has the right to determine his or her own methods to be used in completing the assigned tasks.
- The university will pay the individual as an individual reporting under their own Social Security Number and not through any corporation, partnership, limited liability company (LLC) or any other form of business entity, or reporting under an Employer Identification Number (EIN).
- Compensation for services to be performed for the university will not exceed the maximum amount permitted by University Rule 20-23-02(M). (That current threshold is \$30,000 to be paid in any calendar year.) Contracts for amounts exceeding that threshold must be routed for approval by the Office of General Counsel.
- The Personal Services Contract is for a term not to exceed 12 months.
- Contracted services are not currently being performed by, or would not normally be performed under the job description of, an employee of the university.
- Services to be performed are not on an interim basis while recruiting to fill a vacancy.
- The individual provides his/her own equipment or other materials to perform the work.

The university may retain an individual as an independent contractor under a **LIMITED SERVICES ENGAGEMENT FORM** if all of the following conditions are met:

- All of the criteria listed above for Personal Services Contracts must be met.
- Services to be performed are limited to five working days or less within a 12-month period and within one organizational unit.
- Compensation for services to be performed will not exceed \$10,000.

The university may retain an individual through a **PAYROLLING OR TEMPORARY AGENCY** if all of the following conditions are met:

- The university will pay the agency, which will then pay the individual. The agency is responsible for all tax and benefits compliance and reporting resulting from their payments to the individual.
- Services are under the supervision of the university and/or the agency, either of which maintains the right to control the methods used by the individual to provide his or her services.
- Services are being performed by, or would normally be performed under the job description of, an employee of the university.
- Services may not be performed through an agency by any individual for the same

UC organizational unit for a period of more than one year. An individual may not utilize multiple agencies as a means of circumventing this rule. For any individual, after working for the same university organizational unit through an agency for a period of 6-12 months, a minimum break of 6 months is required before doing further work for that university organizational unit through an agency or as an independent contractor. The engaging organizational unit is responsible for monitoring compliance with these limits for each individual. The Responsible Offices noted in this policy may refuse to approve any contract or payment that, in their professional judgment, would violate these provisions for any individual.

For any payrolling or temporary agency contract covering an individual who is expected to perform services for more than 2 months, the contract should require the agency to offer the individual “affordable” “minimum value” medical insurance (as those terms are defined under the Affordable Care Act) and that the university shall pay to the agency an additional monthly fee for any individual who has elected to purchase the insurance offered by the payrolling or temporary agency.

A payrolling agency is used when the university chooses the individual providing services; a temporary agency is used for an hourly-paid position when the agency chooses the individual for services. A purchase order or term contract is required to use a payrolling or temporary agency.

General Guidelines and Special Situations

- **Current university employees and current university students** – As a general rule, organizational units of the university should not retain current university employees (including student employees) through a Personal Services Contract, Limited Services Engagement Form, payrolling agency or temporary agency to render services.

Additional work assigned to current university employees must be compensated by appropriate methods of additional compensation available through the university’s payroll system. Limited exceptions, requiring the approval of both Tax Compliance and Human Resources, may apply as noted below.

Currently enrolled university students should be hired as university employees, as a general rule. Limited exceptions, requiring the approval of both Tax Compliance and Human Resources, may apply as noted below. When such work is similar to existing student employee positions where the organizational unit has supervision and control over their work, classification as an employee is in order, and organizational units must use the appropriate methods available through the university’s payroll system.

-- Exceptions for current university employees and current university students

Limited exceptions may apply when currently enrolled university students and

current university employees perform services that are outside of existing student worker or employee positions. For example, an employee whose existing position (e.g., accounting) does not include writing and submitting freelance articles for a university publication, can be retained on a Personal Services Contract to provide those article submissions that are not supervised by the accounting organizational unit. The extra work to be done must, on its own merits, meet the conditions required for Personal Services Contracts.

Minimal pre-approved exceptions for currently enrolled university students and current university employees may be processed on the Limited Services Engagement Form. Musical and similar performances of one week or less, and for \$300 or less, including those provided by current university students and employees, may be processed on a Limited Services Engagement Form without the need for advance policy exception approval.

- **Former employees** – Obtaining services of former employees requires coordination with the university's retirement programs. In general, an individual must have a bona fide retirement to begin to receive retirement benefits. Therefore, except in rare circumstances, former employees should not be retained within six months after their retirement date.

Former university employees, whether retired or not, are strongly advised to consult with their OPERS / STRS / Alternative Retirement Plan advisers regarding the potential effects on their retirement benefits of returning to work in any capacity for the university. University organizational units should also proactively recommend to the former employee that they seek that advice from their retirement system. Moreover, there are statutory and regulatory rules regarding the engaging of public retirees as independent contractors or employees. If, at the time of retirement, the organizational unit and the employee have a plan to rehire or otherwise use the services of the employee in any capacity within six (6) months of retirement, the organizational unit should contact Central Human Resources. Central Human Resources should consult the *Guidance for Re-Engagement of Retired Employees Grid*, as may be amended from time to time, when assisting organizational units.

When a former employee is retained to perform services for the university that are similar to their former employee role or to the role of other employees, the organizational unit must hire the individual returning as a university employee if the work assignment is reasonably expected to last for more than one year. If the work assignment will not last for a full year, the organizational unit may retain the individual through a payrolling agency only with the approval of Human Resources. If such an individual is originally retained through an agency with approval from Human Resources, the organizational unit is responsible for ensuring that the individual's duration of service does not exceed one year.

- **International Workers** – Individuals from outside the United States *and*

performing services inside the United States must be legally authorized to work in the United States. The university's International Services office reviews and approves that issue for any such individual. All A114 Requests for Payment must be approved by International Services prior to submitting the request for payment to Accounts Payable.

In addition, the university may be required to withhold federal income tax on payments to independent contractors who are classified as nonresident aliens for US tax purposes, if their services were performed in the United States. The Director, Tax Compliance is responsible for reviewing and approving that issue for any individual. All such A114 Requests for Payment must also be approved by the Director, Tax Compliance. The Director, Tax Compliance has the authority to reduce any such payment to a lesser amount net of withheld taxes.

Individuals from outside the United States *and performing services outside the United States* are not subject to US immigration or tax laws. The International Services and Tax Compliance offices still retain the right to review any A114 Request for Payment, even though US work authorization and US tax withholding are not required in that situation.

- **Academic Credit Course Instructors** – Individuals working in regular faculty or adjunct faculty positions teaching courses for academic credit must be hired as university employees. University students working as teaching assistants (or similar job titles) must be hired as university employees.

Faculty instructors may utilize the instructional services of an external subject matter expert, who may speak to the students in a subordinate instructional role for no more than 2 weeks in any semester, as an independent contractor on a Personal Services Contract.

- **Prepayment for Services** – Prepayment before the independent contractor performs that portion of their services is not permitted under this policy. The organizational unit must not request a payment for any work before the independent contractor's completion of that portion of the work. Any exception requires additional written terms and conditions that must be pre-approved by the Office of General Counsel.
- **Background Checks** – Individuals engaged under this policy may, at the university's discretion, be required to pass a background check. That requirement and its implementation will be as directed by university policies and directives regarding background checks.
- **Working with Minors** – Individuals engaged under this policy are also subject to Human Resources policy 16.19, Protection of Minors on Campus, and are responsible for understanding its requirements. Each contractor attests to that understanding by signing the Personal Services Contract form. Organizational

units are also responsible for complying with that policy, including but not limited to its requirements for supervisors, hiring managers and camp operators of covered programs to take online training on “Hiring Staff Who Work with Minors”. Departments should direct any questions to Human Resources or Enterprise Risk Management.

- **Other** – All other exception requests must be made in writing on a Policy Exception Form signed by a Vice President or delegate authorized to approve A114 payment requests and Personal Services Contracts, and forwarded to the Director, Tax Compliance.

Procedures for Retaining Individual Services

Employee:

To hire an employee, consult applicable Human Resources policies or contact Human Resources for assistance.

Personal Services Contract:

- The organizational unit entering into an agreement with an independent contractor must complete the forms listed below and acquire all required signatures from the contractor and from the university prior to authorizing the individual to begin working. Links to forms are available below in related links.
 1. Personal Services Contract
 2. OPERS Independent Contractor/Worker Acknowledgment (Form PEDACKN)
 3. Contractor Status Questionnaire
 4. Foreign Visitor Supplement - if applicable
- All forms are forwarded for signature as noted on the forms. Contracts over \$5,000 require approval by the identified vice president or designee. Individual VP offices may implement a lower dollar-amount threshold for the required signature. Contracts received by the Contracting Officer or Designee after the work project’s start date listed on the Personal Services Contract also require approval by the identified vice president or designee. For this purpose, VP designees must be listed among those already designated VP authority to sign A114 Requests for Payment as documented on lists submitted by those VP offices to Accounts Payable, or must be delegated separately in writing to the Director, Tax Compliance.
- Human Resources approval is required when the individual is:
 - an Ohio public retiree
 - a current UC employee
 - a current UC student
 - a temporary agency employee
- All forms are then routed to the Director, Tax Compliance who serves as the Contracting Officer’s (General Counsel’s) designee. Other designees as approved by the Office of General Counsel are also authorized to sign Personal Services Contracts for the university. In the case of any Personal Services Contract that exceeds the dollar limit under University Rule 20-23-02(M), the

Office of General Counsel must sign as the Contracting Officer. Also, in the case of any Personal Services Contract including terms and conditions that have not been previously approved by the Office of General Counsel, the Office of General Counsel must sign as the Contracting Officer.

- The signed contract is returned to the originating organizational unit, and a copy is retained by the Contracting Officer or designee.
- Organizational units are responsible for ensuring that services are not performed by the contractor until the contract is fully executed by both parties.

Limited Services Engagement Form:

- The organizational unit entering into an agreement with an independent contractor completes a Limited Services Engagement Form and obtains a signature from the contractor. Link to this form is available below in related links.
- This form does not require additional signatures.
- The organizational unit must also include a Foreign Visitor Supplement, if applicable.

Foreign Visitor Supplement:

- The Foreign Visitor Supplement must be completed by every foreign national providing independent contractor services within the United States.

Payrolling or Temporary Agency:

To retain an individual worker through a payrolling or temporary agency, contact Purchasing.

Payments to Individuals for Services:

The organizational unit requests a payment to the independent contractor by submitting form A114, with appropriate signatures and documentation, to Accounts Payable. Each A114 must include:

- An invoice, timesheet or other documentation from the independent contractor, indicating the work the contractor has already done. Any such statement generated by the organizational unit must be signed by the independent contractor or be accompanied by documented written affirmation of the invoice (such as an e-mail message from the contractor's address) directly from the contractor.
- A copy of the fully executed Personal Services Contract or Limited Services Engagement Form.

Additional Steps for Payments Made to Foreign Nationals for Work Done in the United States:

- The organizational unit entering into an agreement with an independent contractor must follow all the rules stipulated by International Services regarding limited services performed by international visitors. (See related links regarding visa statuses on the UC International website).
- All foreign nationals providing limited services must be on record with UC International Services. The sponsoring unit is required to enter the visitor's data

into the iBearcatsGlobal database and submit the “Other Immigration Statuses” eForm, which will include an Export Control Checklist.

- The Foreign Visitor Supplement must be completed and submitted with the A114.
- If the foreign visitor wants to request benefits (tax exemption or reduced withholding) under the terms of a tax treaty between the US and their home country, they must submit a completed IRS Form 8233. That form will be reviewed and approved or rejected by the Director, Tax Compliance.
- All required documents necessary for payment must be forwarded to UC International Services for approval prior to the A114 being sent to Accounts Payable.

Note: If the foreign national does not have a U.S. taxpayer ID number (Social Security Number or IRS-issued “ITIN”) and there is a tax treaty available that they wish to claim, the visitor will need to meet with UC International Services in person during their visit. Please plan accordingly.

Each A114 for an international visitor providing services in the United States must be approved by International Services and by Tax Compliance.

** Organizational units may institute policies more, but not less, restrictive than this policy (2.3.1) if desired.*

Related links:

- [Personal Services Contract](#)
- [Limited Services Engagement Form](#)
- [Contractor Status Questionnaire](#)
- [Foreign Visitor Supplement](#)
- [Human Resources website](#)
- [Protection of Minors on Campus, policy 16.19](#)
- [Tax Compliance website](#)
- [UC International website](#)
- [Visa Statuses](#)

Phone Contacts:

Accounts Payable	556-6746
Human Resources	556-6925
Payroll Operations	556-2451
Purchasing	556-6742
Tax Compliance	556-2524
General Counsel	556-3483