

Rev: 08/04/2014

Subj: **Guidelines on Independent Contractors**

## **. General**

To ensure compliance with federal and state tax laws, the Fair Labor Standards Act, Department of Labor and Department of Homeland Security requirements, among other laws, the Bloomsburg University has established the following guidelines for contracting with outside individuals (i.e., non-employees) to provide services to anyone at the University. This policy supersedes all previous policies and practices and applies to all campuses, colleges, schools, departments, centers, and other units that fall under the Bloomsburg University's federal tax identification number. This policy applies to all funds regardless of the source.

## **2. Legal and Financial Consequences of Determining Worker Classifications**

The characterization of individuals as independent contractors or as employees has important tax and non-tax consequences to both the University and the individual. When faced with a characterization issue during the course of an audit, the auditing entity will almost always treat individuals as employees, absent a strong, factual basis for classification as an independent contractor on the part of the employer. Misclassification of an individual, in addition to being unlawful, may be very expensive to the University or to persons in positions of responsibility. (Violations of applicable laws may result in the payment of back wages and benefits, fines, and penalties.) Consequently, it is essential that proper characterization of an individual be determined **before** any agreements or contracts (oral or written) or payments are made. The purpose of this policy is to create a standard process for determining the appropriate worker classification of individuals performing services for Bloomsburg University.

## **3. Individuals Generally Classified as Independent Contractors**

Departments must complete [Employee vs. Contractor Determination Form](#) and Independent Contractor Classification Checklist, to support any determination that an individual is to be classified as an independent contractor.

## **4. General Responsibilities for Determining Worker Classifications**

### **a. School/College/Campus Administrator Responsibilities**

- #1** Read, understand, and comply with this policy statement.
- #2** Communicate the policy to all academic personnel and staff who might obtain services of an independent contractor.

- #3 Communicate the policy to prospective independent contractors.
- #4 Determine the individual's status as either independent contractor or employee (as indicated in Sections 5 and 6 below).
- #5 Ensure a properly reviewed and approved, signed, written contract is in place **before** the service is provided.
- #6 Follow the appropriate payment procedures.

#### **b. Independent Contractor Responsibilities**

- #1 Provide detailed information to ensure accurate assessment of status.
- #2 Provide appropriate documentation for payment of services.
- #3 Provide a completed and signed [Employee vs. Contractor Determination Form](#)

### **5. Specific Responsibilities for Determining Worker Classifications**

#### **a. Departmental Responsibilities**

The initial responsibility for determining the classification of an individual as an employee or an independent contractor rests with the department obtaining the personal services. The department should first verify that the individual has not been employed by the University in the current calendar year. An individual who was an employee in the current calendar year **cannot** be hired as an independent contractor, except in limited circumstances where the only payment is an honorarium payment. The department must make the initial determination by completing the signed [Employee vs. Contractor Determination Form](#) and Employee Versus Independent Contractor Classification Checklist. The default position is that the individual is considered an employee.

If the answers to the checklist indicate the individual should be classified as **an employee**, the individual must be placed on and paid through the University payroll system.

If the answers indicate that an individual may appropriately be classified as **an independent contractor**, the individual may be paid as such.

#### **b. Procurement's Responsibilities**

Upon receipt of a request to acquire the services of an individual as an independent contractor, Procurement will first confirm that the individual has been appropriately classified as an independent contractor before proceeding to obtain the services. In confirming independent contractor status, Procurement will review the description of services contained in the purchase requisition and the attached Employee Versus Independent Contractor Classification Checklist form submitted by the department, and will also access the applicable payroll system to determine if the individual has ever been paid as an employee of the University by any department. In questionable cases, for contracts above \$25,000, Procurement will consult with the Business Office, or other designated committee, to reach a final decision. Additional documentation or evidence may be requested to support the final determination.

## 6. Honoraria

An honorarium is a payment for a presentation-oriented, invitational event such as:

- A lecture or talk
- A colloquium
- An address
- Grand round
- A continuing education presentation.

Honorarium and honoraria, as used in this policy, mean money or a thing of value offered to an individual for a speech, appearance, article, or similar item or activity. An honorarium is a fee that is not legally or traditionally required, nor is it based on an agreed or set amount between the University and the person providing services. It is generally considered a gesture of appreciation. Honoraria are the **only** payments that can be made to a former employee who has been employed with the University in the current calendar year.

## 7. Some Possible Consequences of Determining that an Individual Is an Independent Contractor

### a. For the Independent Contractor

- 1) Taxes —The University reports payments to independent contractors, on an IRS Form 1099-Misc, if the total annual amount is \$600 or more. No income tax or employment tax withholding is required.
- 2) Benefits —Independent contractors are not University employees and are not entitled to employee benefits.
- 3) Workers' Compensation —An independent contractor is not covered by the University's workers' compensation policy if injured while working at the University. Independent contractors are required to obtain their own coverage and to submit proof of same prior to commencing the contemplated services.

**b. For the University**

- 1) Taxes — The University is not required to withhold income or employment taxes from payments made to independent contractors.
- 2) Benefits —The University will not pay employee benefits to individuals classified as independent contractors.
- 3) Workers' Compensation —The University's workers' compensation policy does not cover independent contractors.