



## TEXAS TECH UNIVERSITY™

### Operating Policy and Procedure

#### **OP 62.37: Establishing Employee/Independent Contractor Status**

**DATE:** February 23, 2015

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to establish whether a worker is considered an employee or an independent contractor, in compliance with federal regulations relating to payment for services rendered.

**REVIEW:** This OP will be reviewed in June of even-numbered years by the managing director of Payroll Services and the managing director of Financial Services and Tax (FST) with substantive revisions forwarded to the assistant vice president for financial and managerial reporting services and the vice president for administration & finance and chief financial officer.

#### **POLICY/PROCEDURE**

##### **1. Policy**

- a. Employee/Employer Relationship - Common Law Rule [See IRS Publication 15-A]

A worker is an employee under common law rules if the person for whom the work is performed has the right to direct and control the worker regarding both the final results and the details of when, where, and how the work is to be done. Where the employer does not possess that right, the individual involved is an independent contractor, not an employee.

All information that provides evidence of the degree of control and independence must be considered. Facts that provide evidence of the degree of control and independence fall into three categories: behavioral controls, financial controls, and type of relationship.

- b. This OP is not applicable to the services of any person who is a current employee. Any former or retired employee who has been paid by the Texas Tech University System administration (TTUS) or Texas Tech University (TTU) during the past twelve months cannot be paid as an independent contractor with appropriated funds; however, payment may be made as an independent contractor with local funds if the independent contractor criteria are satisfied. Payments to such persons must be made as a supplemental compensation payment through Payroll Services.
- c. This OP is not applicable to the services of course instructors, regardless of the type of pay (hourly or lump sum) or the number of courses taught. These persons are generally not viewed as independent contractors under IRS guidelines.

## 2. **Payments to Employees and Duty to Withhold**

Payments to employees are to be made through Payroll Services on regularly scheduled payrolls in accordance with OP 69.01, and federal withholding tax and OASI will be deducted from the payments for remittance to the appropriate taxing authority.

## 3. **Independent Contractor Questionnaire Required**

Except as provided in section 4 below, the *Independent Contractor Questionnaire* (Attachment A) must be completed by all individuals and businesses operated as sole proprietorships that provide services to TTU.

### a. Payments to Individuals

The questionnaire must be completed and signed by the individual. The account manager should review, sign, and submit the completed questionnaire with the TechBUY requisition for a payment that is to be made payable to an individual. The questionnaire will be reviewed and signed by FST prior to processing.

### b. Payments to Businesses Operated as Sole Proprietorships

When preparing a request for a payment that is to be made payable to a business operated as a sole proprietorship, the account manager should check the independent contractor database (arranged by vendor name) maintained on the Administration and Finance Information Systems Management website ([http://www.depts.ttu.edu/afism/IndContractorList/Contractor\\_List.aspx](http://www.depts.ttu.edu/afism/IndContractorList/Contractor_List.aspx)) to determine if a questionnaire is required. A questionnaire will be required by a business operated as a sole proprietorship either (1) annually or (2) per contract entered into with TTU, depending upon the circumstances.

If required, the questionnaire must be completed and signed by the business owner. The account manager should review, sign, and submit the questionnaire with the TechBUY requisition. The questionnaire will be reviewed and signed by FST prior to processing.

## 4. **Independent Contractor Questionnaire Not Required**

### a. Payments for Goods

A questionnaire is not required for the purchase of goods or commodities.

### b. Payments to Partnerships and Corporations

A questionnaire is not required for payments made to partnerships or corporations for either the purchase of goods or the purchase of services.

### c. Payments to Individuals for Workshop Participation

A questionnaire is not required for payments made to individuals for workshop participant fees. Participation of this type does not rise to the level of performing services for TTU; however, all amounts paid to an individual should be included on the individual's personal income tax return. Amounts paid to an individual by TTU totaling \$600 or more during a

calendar year will be reported to the IRS as other income; reported as “Other Income” (box 3) on Form 1099-MISC. To meet TTU’s reporting obligations, certain information must be obtained from the individual. The *Workshop Participant Information* form (Attachment B) should be used to gather the required information for payments made to individuals for workshop participant fees.

d. Payments to Individuals for Research Participation

Refer to OP 62.25 for all payments to individuals for research participation.

e. Payments to Athletic Game Officials, University Interscholastic League Judges and Assistants, and Game Security Workers

TTU has determined that payments made for these types of services are independent contractor payments and do not require a questionnaire to be completed.

**5. Factors Indicating Employee Status**

No one factor or small group of these factors is definitive; all must be weighed against those that indicate an independent contractor status.

- a. The person is required to comply with instructions (oral, written procedures, or manuals) about when, where, and how the work is to be performed.
- b. The person is trained by an experienced employee who works with her/him.
- c. The person's services are integrated into the business operations.
- d. The services must be rendered personally, and the employer is interested in who does the job as well as in getting the job done.
- e. The organization benefiting from the services hires, supervises, and pays the individual.
- f. There is a continuing relationship between an individual and the organization for which the services are performed. Services may be considered continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.
- g. The establishment of set hours of work indicates employer control.
- h. The worker must devote full time to the business of the employer rather than engaging in other gainful work. Full time does not necessarily mean an eight-hour day or a five-day week.
- i. The work is performed on the employer's premises; however, doing the work off the employer's premises does not mean, of itself, that no right to control exists.
- j. The person for whom the service is performed possesses the right to set the sequence of work.
- k. Employer control is indicated if regular reports must be submitted by the worker.
- l. Control is indicated when the employer pays business and/or traveling expenses.

- m. Control is indicated when the employer furnishes the tools and materials with which to perform the services.
- n. An employer has the right to dismiss an employee, and an employee has the right to end the relationship with the employer at any time without incurring liability.
- o. The person is an employee of another business or university, and the person's primary duties are the same as the work to be performed for the university.

#### **6. Factors Indicating Independent Contractor Status**

- a. The one for whom the services are being performed does not possess the right to instruct the person about when, where, and how the work is to be performed.
- b. Independent contractors ordinarily use their own methods and receive no training from the one who purchases their services.
- c. An independent contractor may hire, supervise, and pay other workers under a contract and agree to provide materials and labor while being responsible for the attainment of a given result.
- d. Independent contractors are masters of their own time, set their own work schedules, and are responsible only for the end results.
- e. The person is free to work when, for whom, and for as many employers as he/she desires.
- f. Independent contractors are customarily paid by the job in a lump sum or on a commission basis.
- g. The worker furnishes her/his own tools and equipment, subject to the recognition of the fact that, in some jobs, it is customary for employees to use their own hand tools.
- h. A significant investment by a person in facilities used in performing services and offering such services to the general public tends to show independent contractor status.
- i. An independent contractor is generally in a position to realize a profit or suffer a loss as a result of her/his services.
- j. An independent contractor cannot be fired as long as the result produced measures up to the contract specifications.
- k. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.

[Attachment A: Independent Contractor Questionnaire](#)

[Attachment B: Workshop Participant Information](#)