

Policy Number: 221.2

Policy: Independent Contractor

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Approved by: Business Services Director

Policy:

I. Determination of Independent Contractor

- A. Determination of the status as an employee or independent contractor for workers' compensation, unemployment insurance, social security and state and federal income tax purposes, employment status as defined in the MCA 39. As to whether the individual is an employee or independent contractor and the legal responsibility for tax withholding and/or provision of benefits are dependent on this determination.
- B. For all contracted services, the person providing the service must not be a current or former employee unless more than six months has elapsed since his/her termination. Montana law prohibits contracting with former state employees, within six months following their termination, to perform services related to matters the employee was involved with during his or her state employment. Section 2-2-201, MCA and/or the MOM State Ethics Policy.
- C. Departments must determine the appropriate employment status of persons or firms providing services to the University before entering into the contract. For workers' compensation, unemployment insurance, social security and state and federal income tax purposes, employment status is defined as either employee or independent contractor.
- D. The legal responsibility for tax withholding and/or provision of benefits depends on this determination. Prior to entering into a contract, departments must determine whether the relationship with the person or firm providing the service is an employment relationship or an independent contractor relationship.
 - a. If the contractor fails to meet the criteria for independent contractor status, the contractor is not an independent contractor and should be placed on the University payroll, consistent with University Personnel policy.
- E. Although federal and state definitions are not identical, departments may use the Independent Contractor Checklist, available to download from the Forms area in the Business Services website www.msubillings.edu/boffice, as a guideline for determining employment status.
- F. To be considered an "independent contractor," a firm or individual should meet the criteria set forth on the checklist. Failure to meet one or more criteria strongly indicates an employee/employer relationship.