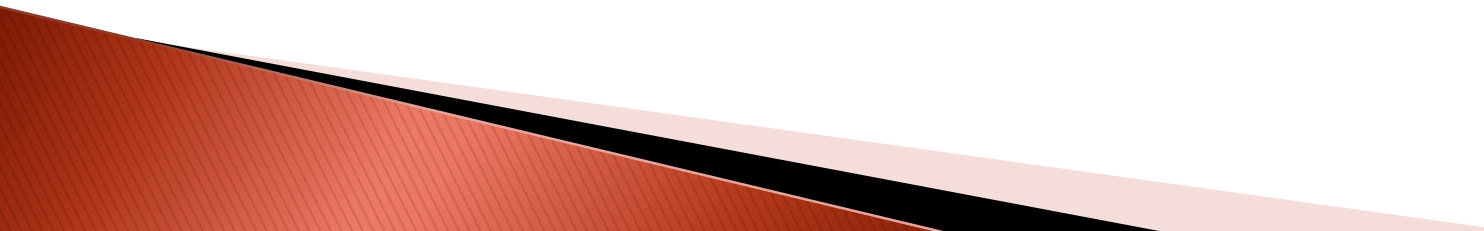


Independent Contractor Policy

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Policy Overview

Policy Statement

- Presumption of employee status unless 3-part Massachusetts IC test is met
- A worker or department's preference **is not relevant** to the classification determination.
- All proposed IC engagements must be reviewed and approved as set forth in the Policy before engaging an individual
- Services cannot be rendered until an ICQ has been completed and approved and a contract signed

Reasons for the Policy

- Harvard must comply with Massachusetts and federal law
 - Wage and hour requirements (including overtime)
 - Tax withholding requirements (income tax, social security and Medicare)
 - Workers compensation, unemployment and other benefits

Policy Overview

Risks if Schools or Units Fail to Comply

- Financial liability - including taxes, workers' compensation, unemployment benefits as well as fees and fines assessed by both the federal and the state which must be paid by the hiring department
- Civil and criminal liability – willful violations can incur fines or imprisonment
- Reputational liability
- Other risks

Who Must Comply

- All Harvard University schools, tubs, local units, Affiliate Institutions (e.g., Harvard Global, Wyss Institute, etc.), Allied Institutions (e.g., HUP, Arnold Arboretum, etc.) and University-wide Initiatives must comply. Harvard-affiliated Hospitals are not considered affiliate institutions.

Responsibilities for Compliance

Local Hiring Department or Unit

- Determine if the IC Policy applies and initiate any required procedures, including completion of ICQ
- Obtain proper review and approval before contract is signed and before any services are performed

Local HR Office

- Review proposed IC engagements, including signing ICQ, and approve engagement as IC if three-part test is satisfied
- Ensure that departments are familiar with, and receive training regarding, IC policy requirements

Local Department or Unit's Accounts Payable Approver

- Ensure that required documentation that supports IC classification is completed before a vendor is created in AP system or payment issued (signed contract, approved ICQ or written statement of why not required, and an invoice)

When to Complete an Independent Contractor Questionnaire (ICQ)

- An independent contractor questionnaire (ICQ) must be completed regardless of where the work is being completed (including those performing work inside and outside of Massachusetts) and prior to engaging the individual to start work.
 - For work outside of the U.S., *Harvard must follow the rules and regulations based on the country in which the work is taking place.* These provisions may be different than MA law and are occasionally more stringent (Europe) or entail tax withholdings on payments to contractors. The local school or unit's HR office can work with Global Support Services (GSS) to determine international IC status.
- An ICQ is required for the following engaged to perform a service for Harvard
 - An individual engaged to perform a service for Harvard (but see exceptions)
 - Single-Employee Limited Liability Company (LLC), Unincorporated or Incorporated Company
 - An ICQ is required when a company is a single-employee company (even if it subcontracts additional workers)
 - Third-Party Entity that Act as Freelancer Marketplace
 - If the third-party entity does not go through a formal classification process but rather acts as a freelancer marketplace (an intermediary which advertises and coordinates individuals selling their services) an ICQ must be completed

ICQ Exceptions Process

- Under limited circumstances, the formal completion of an ICQ is not required
 - The local department or unit must still confirm that the classification satisfies the three-part legal test
 - A written contract is still required.
 - The local department or unit must provide the accounts payable approver with a written exception attestation form or statement of why an ICQ is not required
- Guest Speaker or Guest Lecturer receiving an honorarium or speaking fee for a one-time speaking engagement
 - An honorarium is a payment provided as a token of appreciation for participation in an activity or event, rather than payment as a contractual obligation for services rendered
 - This exception cannot be used for individuals teaching or co-teaching a substantial portion of a course, those listed as instructors in the course catalog, or those who hold a Harvard appointment for their teaching role

ICQ Exceptions Process

- Single, Short-Term Engagements for Less than \$3,000 - An ICQ is not required if
 - the engagement satisfies the three-part IC test;
 - the engagement will last no longer than three months (90 calendar days); AND
 - total payments to the IC will not exceed \$3,000.
- Note - If the local department or unit renews, extends, or enters into a subsequent engagement with the IC within a 12-month period, then then a completed ICQ is required.

Where Policy Does Not Apply and an ICQ is not Required

- The Policy does not apply and an ICQ is not required for the following performing services for Harvard
 - Suppliers/vendors with more than one employee
 - Human Subject Payments (See [Human Subject Payments Policy](#))
 - When the University is contracting with a third-party entity (e.g., managed services provider, temp agency, payrolling service, IT staffing firm) to obtain personnel who are classified by those firms as employees or contractors to perform services

Three-Part Legal Test Requirements

- Under Massachusetts law, every individual receiving payment for services to the University is **considered to be an employee** of the University unless all of the factors in the 3-part Massachusetts legal IC test are satisfied
 - Massachusetts IC test is among most restrictive – more restrictive than IRS test with the familiar “20 questions” analysis
- The Massachusetts IC 3-part test (all 3 prongs must be met)
 - Part 1: The worker must be free from Harvard’s control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact
 - Part 2: The service performed by the worker must be outside the usual course of Harvard’s business, and not a regular and continuous part of business operations
 - Part 3: The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard

Mass. Gen. Laws Ch. 149, sec. 148B

Part 1: Free from Harvard's Control and Direction

- The worker must be free from Harvard's control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact
 - Duties are carried out with minimal instruction/training from Harvard – IC has independent control and direction over the work
 - Individual performs functions using an approach of their own choosing
 - Individual sets their own hours
 - Determines the appropriate tools and methods to use
 - Uses their own materials and supplies
 - Determines when and where to work (within general parameters)
 - Individual determines how much work is needed to perform the project for which they have been retained
 - Individual is being paid a flat fee by the job or project rather than an hourly rate

Part 2: Outside Usual Course of Business

- The service performed by the worker must be outside the usual course of the employer's business
 - The service performed by the individual must be incidental to the operations of the School, local unit, or department rather than a necessary or integrated component of operations
 - Are the services a necessary or integrated component of operations?
 - Does this unit typically use Harvard employees to perform these services?
 - Will the individual supervise Harvard employees?
 - This assessment should consider whether the service is a regular and continuing part of the operations of the School, local unit, or department engaging the worker
 - Duration of engagement a significant factor - Longer engagements (e.g. that exceed 6 months) are more likely to fail this prong of the test, because the services performed may be more likely to be part of the regular and continuing operations of the School, local unit, or department.
 - Whether the services will be provided over an open-ended period of time, rather than a discrete or defined period

Part 3: Established Trade

- The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for Harvard
 - Individual must operating an independent business enterprise which offers its services to other clients or customers
 - Individual must be capable of performing the services for other entities and should not be solely dependent on Harvard for work
 - Fact that work is performed off-site not relevant – test is whether individual is regularly engaged in offering such services to others
 - Projects that require individual to devote a substantial majority of their working time to Harvard, precluding work for others, should be limited in duration
 - Some indicia - website, business email address, business card, business tax ID number

If an Individual is Classified as an IC – Local Hiring Department

Completing Contract

- Follow local school or unit requirements around contracts and the contract review process. Be sure that any IC contract contains the following language: **[Consultant/Contractor/Vendor] shall be an independent contractor, free from Harvard's direction and control, and not an agent or employee of Harvard.**
- The Office of the General Counsel has model contracts, which may be suitable for the engagement and are available [here](#). Strategic Procurement (SP) has additional master service agreement templates as well as a contract checklist which may be found on their [internal website](#).
- NOTE: A debarment form or debarment language must be included in contract language when using federal funds, cost-share funds, or expect expenses to be journaled onto to federal funds.
- Other contract requirements may also be required (such as purchasing procedure dollar thresholds). See [Procurement Policy](#) or [Procure to Pay Manual](#).
- Be sure to note in the contract or communicate to ICs the requirement that they follow Harvard Policy for any travel or out-of-pocket reimbursements, as well as requirements related to the Massachusetts [Performers Tax](#) and tax withholding for nonresident aliens (i.e., foreign nationals) for work completed inside of the U.S. See [Performer Tax](#) Information.
- Based on the type of service, location of service and individuals tax residency status, additional taxes may be withheld.

Once Work has been Completed – Local Hiring Department & Approvers

- After the work has been completed to the hiring department or unit's satisfaction, the IC must submit an itemized invoice to the school or unit for processing. Purchasers and preparers should confirm that the required documentation has been completed (ICQ and contract) and review the invoice following the [Responsibilities of Purchasers, Preparers and Approvers](#) (ROPPE) policy.
- Payment through HCOM is the only acceptable method of payment for independent contractors. Harvard must not pay for IC services via out-of-pocket or by using a Harvard Corporate Card or PCard
- Collect required documentation to set individual up as a vendor
- Review and prepare invoice for payment
 - Invoices should be itemized
 - Be sure to note if work was completed within or outside the U.S., since it may affect tax withholding rates for Nonresident Aliens
 - Use the appropriate object code based on the services completed
 - Use object codes 8690 or 8692 for ICs who earn income connected with performances (i.e., speakers, presenters, charges related to a performance {actors, musicians, directors, production crew, sound, light, stage workers}, athletes, etc.). See [Performers Tax](#) for additional information.
 - Other professional services are generally processed within the M784 object code range though other object codes may also be appropriate

Once Work has Been Completed - Approvers

- Accounts Payable Approver Responsibilities
 - When submitting the invoice for approval, the hiring department or unit must have completed the required documentation listed below
 - Approver is responsible for ensuring that the required documentation listed below has been completed before any payment is issued to an IC
- Required Documentation
 - A completed questionnaire (ICQ), signed by HR, approving the classification of the individual as an IC or the IC Questionnaire Exception Attestation Form or language that confirms the contractor meets IC Policy Exceptions
 - The completed ICQ may be submitted with the invoice or evidenced in some other way. Some schools or units may use [Conga-Novatus](#) as an ICQ and contract management tool or have other internal processes for tracking that the ICQ has been completed
 - A completed and signed contract. Some schools or units may use [Conga-Novatus](#) as a contract management tool or have other internal processes for tracking approved contracts
 - An itemized invoice
- Approvers must review the documentation and invoice following the [Responsibilities of Purchasers, Preparers and Approvers](#) (ROPPA) policy.
- If the approver does not receive or have evidence of the above required documentation, the payment cannot be processed.