

Payments to Independent Contractors

Responsible Office:
VCU Procurement and Payment

POLICY STATEMENT AND PURPOSE

This policy will assist in complying with tax and procurement regulations associated with the payment of persons not already in an employment relationship with Virginia Commonwealth University who perform contractual services that do not meet the definition of employee. Such persons providing services to the University are paid in compliance with applicable personnel, Internal Revenue Service, State purchasing, and Virginia Public Procurement Act requirements.

WHO SHOULD READ THIS POLICY

All faculty and staff should read this policy.

RELATED DOCUMENTS

Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors
Federal Tax Code, Section 31.3401(c) -1

CONTACTS

VCU Procurement and Payment, in consultation with VCU Human Resources, officially interprets this policy and shall revise or eliminate any or all parts as necessary to meet the changing needs of Virginia Commonwealth University. Please direct policy questions to VCU Procurement and Payment.

DEFINITIONS

Employee

A person is considered an “employee” when the employer has the right to control and direct the individual regarding the result of the work to be accomplished and the details of the work. If an employer/employee relationship exists, the person performing the work must be set up in an appropriate position as a VCU Employee.

Employer

An employer has the right to control and direct an individual (employee) who performs services, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished. The employer determines what shall be done and how it shall be done.

The Federal Tax Code, Section 31.3401 (c)1 establishes, and the University adheres to, the criteria for an organization to be considered an employer.

Independent Contractor

A person is considered an “independent contractor” when the work is controlled only in regard to the results, and not the means of achieving them. If the person meets the definition of an independent contractor, an Independent Contractor Agreement (ICA) is the appropriate method of payment. Hourly rates are not included in ICAs; rather the total cost of the service is listed.

Typically, when an individual is an independent contractor, s/he bears the risk of profit or loss directly from his/her efforts, may hire assistants, and may provide services to more than one unrelated customer (separate and distinct entities) at a time.

Independent Contractor Agreement

A Independent Contractor Agreement (ICA) is a contract between VCU and an individual not in an employment relationship with the University for payment for a specific service or product.

PROCEDURES

ICAs for Individuals Not Employed by VCU

Independent Contractor Services Costing Less than \$5,000

Persons not in an active employee relationship with the University as the employer, who perform services for less than \$5,000 as described below, will be paid as independent contractors using the ICA form and a purchase order.

The following are **examples** of services for which a provider may be paid as an independent contractor using a Independent Contractor Agreement and purchase order. Such services are typically one-time only and of limited duration, and are nonrecurring within a semester or calendar year. Repeated and/or extended occasions of service normally constitute an employment relationship with the University in which the person is paid according to appropriate employment procedures as faculty or staff. Departments, in consultation with Human Resources, will make determinations of independent contractor versus employment status, based on factors listed in the IRS Form SS-8. Questions regarding payables and taxes for independent contractors should be addressed to Accounts Payable. Independent contractors may be persons, not otherwise employed by VCU, who:

- Tutor or teach continuing education or other courses of less than one week's duration and who do not return as instructors within the calendar year.
- Serve as patients or subjects of medical, pharmaceutical, behavioral, or developmental research. (This is an exception in that payments may be paid using a direct pay form and employees may be paid through Accounts Payable.)
- Perform as musicians, dancers, models, or other entertainers.
- Provide services, such as photography, graphics, writing/reporting, and certain editing expertise.
- Officiate at sporting events involving team or individual competitors from VCU and other colleges.

Independent Contractor Services Costing More than \$5,000

For individuals not in an active employee relationship with the University who provide services requiring payment of more than \$5,000, departments should submit a requisition, associated documentation, and a signed ICA to University Purchasing so that the procurement process can be initiated. The ICA amount must reflect the total amount for all services to be provided. For example, if the individual will be paid \$2,500/quarter the amount of the ICA is \$10,000. Work performed by the person may not commence until the procurement process is complete.

Employees Cannot Serve as Independent Contractors

Faculty, classified and hourly employees cannot be considered independent contractors and may not be paid using a ICA. In most cases, they are performing additional duties as an employee and they are either paid for hours worked in their current position or as a overload job.

Department Responsibilities

The department engaging the service(s) is responsible for ensuring that these requirements are properly applied. Any unit that engages a service should provide prompt and appropriate compensation in compliance with federal, State, and University regulations. Assessment(s) of penalties, interest, or unpaid taxes resulting from an incorrect determination of employment status will be the responsibility of the contracting department.

Guidelines to determine if the individual should be an employee or independent contractor can be found at [Emp vs IC](#).

[Independent Contractor Agreement](#) must be used to pay independent contractors