



Independent Contractor Policy

Policy Statement

The University is committed to hiring individuals who perform services for the University in accordance with applicable law, including laws and regulations pertaining to the proper classification of individuals as independent contractors or employees. It is the policy of Boston College to have all proposed independent contractor service agreements with individuals reviewed for proper classification prior to engaging the individual. Prior to committing to pay an individual for services, the University will determine whether the individual will be classified as an employee or independent contractor in accordance with the guidance and procedures described below.

Background

Under Massachusetts and Federal law, the University is required to meet a number of obligations with respect to the treatment of employees, including wage and hour requirements and payroll withholding requirements. The consequences of misclassifying employees as independent contractors may cause the University to fail to meet these obligations and give rise to significant liabilities, including tax liabilities and penalties, criminal sanctions, and civil liability. The University has adopted this policy to guide hiring managers and to establish procedures to ensure that individuals are properly classified.¹

Making the Independent Contractor Classification

Massachusetts independent contractor law is generally more stringent than the guidance provided by the Internal Revenue Service. Under Massachusetts law, an individual receiving payment from Boston College is presumed to be an employee of the University unless all three of the following classification conditions are satisfied. An individual's hiring preference is not relevant to the classification determination.

- 1. The individual is free from control and direction by the University in connection with the performance of the service.** In order to be considered an independent contractor, the individual must be able to bring his or her own approach to the performance of the task. This does not mean that the individual must be free from all direction, but his or her activities and duties should be carried out with minimal instruction and the University should have the right to control or direct only the result of the work, not the means and methods of accomplishing the result. A statement of

¹ This Policy does not apply when hiring full-time students of Boston College. For the hiring undergraduate and graduate students, see: www.bc.edu/studentemployment.

independent control and direction should be explicitly set forth in a contractual services agreement and carried out accordingly during the course of the relationship. An independent contractor should be allowed to dictate the hours that he or she will work on the job, though the University may restrict on-site activities to certain times in order to account for campus activities.

2. **The service is performed outside the usual course of the business of the University.**

The services performed by the individual must be incidental to the operations of the University rather than a necessary component. The services will be necessary – and the individual must be classified as an employee – if the service forms a regular and continuing part of Boston College’s operations. For example, adjunct faculty members should be treated as employees, because they provide services that are integral to the University’s educational activities of teaching and research, while it may be possible, on the other hand, to classify someone hired to design a website as an independent contractor because this service is incidental to University operations.

3. **The individual is customarily engaged in an independently established trade, occupation profession or business of the same nature as that involved in the service performed.**

To be an independent contractor, the individual must be performing work for the University as part of an independent enterprise and hold himself or herself out to the public as a service provider. The person must be capable of performing the services for other employers and should not be solely dependent on Boston College for work. The fact that an individual performs work for the University off-site is not relevant; the test is whether the person is regularly engaged in providing such services for others. The individual’s status as sole proprietor or partnership is irrelevant to this condition.

Independent Contractor Hiring Procedures

Hiring departments must apply the guidelines in this policy when considering engaging an independent contractor. Prior to hiring an independent contractor, the new vendor must complete the Independent Contractor Questionnaire form as part of Boston College’s W9 Form, and submit the form to Procurement’s Accounts Payable unit. Accounts Payable will review the W9 and Independent Contractor form and make an initial determination regarding the classification. If the independent contractor engagement is approved, Procurement Services will request a Personal Services Agreement from the hiring department prior to processing any invoices for payment. If Accounts Payable is unable to clearly determine that the individual should be classified as an independent contractor, the form will be routed to Human Resources for review to determine if the individual will be classified and hired as an employee.