

Policy on Independent Contractor vs. Employee

Policy Owner
Finance and Human
Resources

Policy Contact
Controller/HR

Date Revised:

Effective Date:
September 15, 2021

Policy Statement

In accordance with Federal and State laws and regulations pertaining to the proper classification of individuals as independent contractors or employees, Bentley University must properly determine whether an individual providing services should be classified as an employee or as an independent contractor before any purchase requisitions are initiated or services are performed. This policy provides a standard process for making this determination and identifying appropriate supporting documentation.

The consequences to Bentley of misclassifying employees as independent contractors may include significant liabilities, including tax liabilities and penalties, criminal sanctions, and civil liability. Annually, the Accounts Payable Office will evaluate vendors paid to ensure individuals have been properly classified.

Reason for Policy

The policy promotes compliance with laws and regulations that apply to the classification and hiring of independent contractors; and serves to avoid exposure to an unreasonable risk to the University's reputation, mission, or funds.

Applicability

This policy applies to all members of the Bentley University community who engage individuals to perform services for the University, authorize expenditures related to such services, or process payment transactions, **unless** they are guest lecturers, occasional performers, and/or individuals paid less than \$5,000 per year.

Background

Under Federal and State laws and regulations, the University has a number of obligations relative to its employees, including meeting wage and hour obligations such as minimum wage and overtime pay; withholding applicable Federal and State taxes from employee compensation; and/or contributing to unemployment and workers' compensation insurance. The laws that govern these obligations generally presume that if the University is hiring an individual to perform services, the individual is an employee unless the following conditions are satisfied:

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- The individual is free from control and direction by the University in connection with the performance of services. The University should direct only the result of the work, not the means and methods of accomplishing the result.
- The services are performed outside the usual course of the business of the University. Individuals who perform services that are a necessary component of the operation of the University, such as instruction and research, should be classified as employees.
- The individual is customarily engaged in an independently established trade, occupation, profession or business, and can incur profits or losses.

IRS.gov (<https://www.irs.gov/taxtopics/tc762> March 2021) definition:

*“...you must examine the relationship between the worker and the business. You should consider all evidence of the degree of control and independence in this relationship. The facts that provide this evidence fall into three categories – **Behavioral Control, Financial Control, and Relationship of the Parties.**”*

***Behavioral Control** covers facts that show if the business has a right to direct and control what work is accomplished and how the work is done, through instructions, training, or other means.*

***Financial Control** covers facts that show if the business has a right to direct or control the financial and business aspects of the worker's job. This includes:*

- *The extent to which the worker has unreimbursed business expenses*
- *The extent of the worker's investment in the facilities or tools used in performing services*
- *The extent to which the worker makes his or her services available to the relevant market*
- *How the business pays the worker, and*
- *The extent to which the worker can realize a profit or incur a loss*


***Relationship of the Parties** covers facts that show the type of relationship the parties had. This includes:*

- *Written contracts describing the relationship the parties intended to create*
- *Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay*
- *The permanency of the relationship, and*
- *The extent to which services performed by the worker are a key aspect of the regular business of the company...”*



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Procedures

Step 1. – Is the worker an individual to be paid for services provided to the University (vs. a corporation)?

- No –  This policy does not apply to corporations..
- Yes – proceed to Step 2.

Step 2. – As of the effective date of this policy, complete the Independent Contractor Vs. Employee Checklist (See Appendix A) prior to engaging services, **unless** they are guest lecturers, occasional performers, and/or individuals paid less than \$5,000 per year. ***If you are unsure whether the individual is an independent contractor and would like an opinion before completing the next steps, the checklist can be forwarded to Accounts Payable for review GA_AcctsPay@Bentley.edu, or your HR Business Partner.***

- a. Did the Checklist indicate the individual will be working as an independent contractor?
 - Yes –  pay via Accounts Payable. Go to Step 3.
 - No – proceed to b.
- b. Did the Checklist indicate the individual will be working as an employee?
 - Yes –  Contact your HR Business Partner to determine how this employee should be classified.
 - No – Proceed to Step 3.

Step 3. – Payment as an Independent Contractor

- a. Work with Procurement to create and execute a contract, if required. Ensure the checklist is attached to the contract for obtaining approval from General Counsel.
- b. Set up the independent contractor in Workday in order to pay via Accounts Payable.
 - Complete a Supplier Request in Workday (see the Workday job aid [here](#)) and upload a completed “Independent Contractor vs. Employee Checklist” (See Appendix A) to confirm the determination that the individual is an independent contractor (if required – see **Step 2**).
- c. Once the supplier has been added to Workday, complete a Supplier Invoice Request in Workday (see the Workday job aid [here](#)) or Requisition if the total payments will exceed \$5,000 for the fiscal year (see the Workday job aid [here](#)) to pay the individual as an independent contractor.

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Appendix A – Independent Contractor (IC) VS. Employee Checklist

There are 20 factors used by the IRS to determine whether you have enough control over a worker to be an employer.

This designation is not at the discretion of the individual worker

If you answer “Yes” to all of the first four questions, you are most likely dealing with an independent contractor.

* Factors to Consider	IC	Employee
F Can the worker make a profit or suffer a loss as a result of the work, aside from the money earned from the project? (This should involve real economic risk-not just the risk of not getting paid.)	Yes	No
F Does the worker have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)	Yes	No
F Does the person work for more than one company at a time? (This tends to indicate independent contractor status, but isn't conclusive since employees can also work for more than one employer.)	Yes	No
F Does the worker offer services to the general public?	Yes	No

*C = Behavioral Control; F = Financial Control; R = Relationship of the Parties (See <https://www.irs.gov/taxtopics/tc762>)

If you answer “Yes” to any of the remaining questions means your worker is most likely an employee.

* Factors to Consider	Employee	IC
C Do you have the right to give the worker instructions about when, where, and how to work? (This shows control over the worker.)	Yes	No
C Do you train the worker to do the job in a particular way? (Independent contractors are already trained.)	Yes	No
C Are the worker's services so important to your business that they have become a necessary part of the business? (This may show that the worker is subject to your control.)	Yes	No
C Must the worker provide the services personally, as opposed to delegating tasks to someone else? (This indicates that you are interested in the methods employed, and not just the results.)	Yes	No
C Do you hire, supervise, and pay the worker's assistants? (Independent contractors hire and pay their own staff.)	Yes	No
R. Is there an ongoing relationship between the worker and yourself? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)	Yes	No
C. Do you set the worker's hours? (Independent contractors are masters of their own time.)	Yes	No
C. Must the worker spend all of his or her time on your job? (Independent contractors choose when and where they will work.)	Yes	No
C. Must the individual work on your premises, or do you control the route or location where the work must be performed? (Answering no doesn't by itself mean independent contractor status.)	Yes	No
C. Do you have the right to determine the order in which services are performed? (This shows control over the worker)	Yes	No
C. Must the worker give you reports accounting for his or her actions? (This may show lack of independence)	Yes	No
F. Do you pay the worker by hour, week, or month? (Independent contractors are generally paid by the job or commission, although by industry practice, some are paid by the hour.)	Yes	No
F. Does the worker perform the same work as a regular employee	Yes	No
C. Do you provide the worker with equipment, tools, or materials? (Independent contractors generally supply the materials for the job and use their own tools and equipment.)	Yes	No
R. Can you fire the worker? (An independent contractor can't be fired without subjecting you to the risk of breach of contract lawsuit.)	Yes	No
R. Can the worker quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)	Yes	No

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Individual Name/Business Name

Bentley Supervisor Name and email address