

Purpose

Many Mott Community College (MCC) departments regularly employ the services of individual(s) to perform varying services. These arrangements often raise questions on the status of the individual, such as "Should they be classified as an employee or an independent contractor?" Whether an individual(s) is classified as an employee or an independent contractor is critical to the proper withholding of income, Social Security, Medicare, and unemployment taxes. Classification is based on IRS guidelines using their Twenty-Rule Common Law Test and not on administrative convenience or relative cost. This procedure provides guidance and information to hiring managers to help correctly classify service providers and is intended to:

1. Ensure compliance with [Board Policy 5005](#) Independent Contractors;
2. Provide information about the distinction between employees and independent contractors;
3. Provide a questionnaire to aid in classification determination;
4. Provide a template contract for independent contractor services; and
5. Ensure & provide procedures for proper recordkeeping and tax reporting.

Definitions

Employee: An individual who performs services that are subject to the will and control of an employer – both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.

Independent Contractor: An individual or entity engaged to perform services and commonly referred to as a service provider, consultant, freelancer, contractor, etc. Independent Contractors are responsible for the means and methods for completing the task based on specifications in their contract and are not supervised or controlled by MCC.

Contract: A legal agreement between the college and another party that contains an offer by one party and an acceptance by the other party to either do or not do something for consideration of something of value (usually money). The contract must be of lawful intent, create a mutual obligation on both parties and be executed by competent persons with the authority to do so.

Form 1099 MISC: A form used to report to the Internal Revenue Service (IRS) and the taxpayer various types of earned income, i.e. compensation to independent contractors.

W-9 Form: A form created by the IRS which obligates a person or entity to provide their federal tax classification and taxpayer identification if they are being compensated for performing a service. How a person or entity reports their tax classification on the W-9 form determines how MCC files the appropriate tax documents with the IRS at fiscal year-end.

Risk of Misclassification of Independent Contractors

Inaccurate classification of an employee or independent contractor creates a possible tax liability and retirement liability for MCC. Under audit, if the IRS determines that the payment should have been made as an employee and not as an independent contractor, MCC could be liable for the payment of all taxes and retirement payments that *should have* been withheld, including federal income tax, social security tax (both the employer's and employee's share) and Medicare taxes, plus interest and penalties.

The Common Law Test is a guide used by the IRS to determine if a worker should be classified as an employee or an independent contractor. Some of the factors to consider under the standard Common Law Test are shown below.

	FACTORS	EMPLOYEE	INDEPENDENT CONTRACTOR
1	INSTRUCTIONS	Must follow set and/or mandatory rules, where, when and how to perform work.	Follows own individual instructions. Performs work based upon independently established procedures.
2	TRAINING	Received and/or is required to receive training.	Skilled professional requiring no training to adequately perform services.
3	INTEGRATION	Provides essential services which meld into overall business operation.	Work performed is not an “integral part” it is a “unique” service.
4	SERVICES RENDERED	Required to render services personally.	Have assistants or employees while retaining the right to hire others to perform the required work.
5	HIRING ASSISTANTS	Does not supervise or hire others to complete work assigned.	Hires assistants at his/her expense to perform all or part of the project.
6	CONTINUING RELATIONSHIP	Services are part of a continuing relationship.	Provides services and contracts for separate and distinct projects, not on a continuing basis.
7	SET HOURS OF WORK	Required to work set hours.	Retains the right to complete work at any time.
8	FULL-TIME WORK	Required to devote full-time to a job on a non-project basis.	Contract specifies what is to be accomplished by what date.
9	WORK DONE ON PREMISES	Required to work on-site, on a route, or at a designated location	Rents/leases or otherwise chooses the location where work is performed.
10	ORDER OR SEQUENCE SET	Require to perform tasks in set manner, routine, schedule.	Has full discretion over routine or manner in which to perform services.
11	REPORTS	Required to submit regular oral and/or written reports where work is evaluated.	Has few or no obligations to file regular reports
12	PAYMENTS	Payment by the hour, week, or month in a regular interval.	Compensation determined separately by project or based on fixed fee.
13	EXPENSES	Expenses are paid or reimbursed.	No reimbursement for out-of-pocket expenses unless as part of contract.
14	TOOLS AND MATERIALS	Tool and materials are furnished.	Furnishes own tools and materials.
15	INVESTMENT	Does not invest in facilities and/or equipment used to perform services.	Possesses and invests in facilities and equipment to perform services.
16	PROFIT OR LOSS	Compensated for services at fixed rate regardless of profitability.	Shoulders the possibility of incurring a loss and realizing a profit.
17	WORKS FOR MORE THAN ONE PERSON OR FIRM	Performs services for only one firm at a time, on a non-project basis.	May have numerous concurrent clients and is not financially dependent on any one.
18	OFFERS SERVICES TO GENERAL PUBLIC	Services are not offered to the general public.	Offers services to the public
19	RIGHT TO FIRE	Can be discharged at any time with no liquidated damages.	Cannot be discharged other than for failure to perform the contracted services.
20	RIGHT TO QUIT	May terminate the relationship at any time.	May terminate his/her relationship only upon completion of contract or breach of other party.

Guidelines in choosing an independent contractor

1. Obtaining the services of an independent contractor or consultant should be based upon a selection process that secures a qualified individual for the assignment and is in compliance with the college's Purchasing Procedures.
2. Compensation should be appropriate for the type of advice or service provided and should reflect the skills and qualification of the individual selected to perform the service.
3. Full-time, salaried employees of the College who may be asked to serve as consultants for other College departments are not entitled to receive additional compensation for performing such services when those extra duties fall within their area of professional expertise. This is true even when the work is conducted during an employee's "own time" or outside of normal business hours. Such assignments are considered part of the job for which the employee is already compensated. Hourly employees who work hours in addition to their standard hours may be eligible for additional pay, which may or may not be considered overtime pay.
4. If the worker is currently being paid as an employee in another capacity, they cannot perform the work as an independent contractor.
5. College employees who incorporate, and who in turn provide services to the College that are related to their primary job assignment will not be classified as independent contractors solely because they have incorporated.
6. If it is determined the status of Independent Contractor is not appropriate, the individual may be employed through one of the College's approved temporary employment agencies (see HR website for more information).

Employee/Independent Contractor Determination

Step 1: Determining Correct Classification

Determining the correct classification is not an easy task. The twenty common law factors are intended as a guideline, not as strict rules. The IRS states, "The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed."

Two basic questions should be answered to help clarify the classification:

1. Does the College control or have the right to control what the worker does and how the worker does his or her job?
2. Is the worker currently being paid as an employee in another capacity?

If a "no" answer pertains to either of the questions, proceed to Step 2.

A "yes" answer to either one of these questions means that the worker in question is considered to be an employee, and the Employee/Independent Contractor Questionnaire form is not required. The individual should be hired as a temporary employee through one of the College's approved temporary employment agencies (see HR website for more information).

Step 2: Completing Necessary Forms

Complete and submit the following documents as a packet to HR:

- a. [Independent Contractor Status Form](#)
- b. [Employee/Independent Contractor Questionnaire](#)
- c. Signed [W-9](#)
- d. Draft copy of the Independent Contractor Service Agreement

Note: If the Independent Contractor is funded by a grant, awareness of any/all grant limitations must be observed. Attach any necessary grant documentation to the Independent Contractor Service Agreement.

Step 3: Classification Decision by the Human Resource Department

After reviewing the submitted packet, if HR determines Independent Contractor is not the appropriate status, the hiring manager should proceed with employing the individual through one of the College's approved temporary employment agencies (see HR website for instructions).

If it is determined Independent Contractor is the appropriate status, proceed to **Step 4**.

Step 4: Finalization of Contract Documents and Purchase Orders

Forward the Independent Contractor Questionnaire, the approved Independent Contractor Status Form, signed W-9, and the draft Independent Contractor Service Agreement to the Purchasing Department. Create a requisition in Colleague for a blanket purchase order for the Independent Contractor (if the individual will be employed through one of the temporary employment agencies, create a requisition for a blanket purchase order for the temporary employment agency).

Purchasing will review the Independent Contractor Service Agreement and coordinate with the college's attorney for final legal approval before obtaining the appropriate signatures. The executed Service Agreement will be scanned and stored in the contract database and the original will be returned to the department, along with a copy of the blanket purchase order.

Step 5: Administering the Contract and Making Payment

Follow established Accounts Payable guidelines for invoice payment. Approved invoices should clearly show the blanket purchase order number and be signed by the authorizing manager. Allow 10 days for processing and check issuance.

It is the responsibility of the department administering the contract, in accordance with MCC's Contract Signing Procedure, to ensure that any amendments, extensions or other changes to the original contract are executed before any additional services and payments are made to the independent contractor.

Responsibilities by Department

Department/Division:

1. Complete and submit the following documents as a packet to HR:
 - a. Independent Contractor Status Form
 - b. Employee/Independent Contractor Questionnaire
 - c. Signed [W-9](#)
 - d. Draft copy of the Independent Contractor Service Agreement
 - e. *Note: If the Independent Contractor is funded by a grant, awareness of any/all grant limitations must be observed. Attach any necessary grant documentation to the Independent Contractor Service Agreement.*
2. After receiving a status determination from HR, submit the signed W-9 form, approved Independent Contractor Status Form, Employee/Independent Contractor Questionnaire and a draft of the Independent Contractor Service Agreement to the Purchasing Department.
3. Create a requisition in Colleague to request a BPO to either the individual as an independent contractor or to the approved temporary staffing agency.
4. Submit any requested amendments, extensions or other changes to the Independent Contractor Service Agreement, if necessary, to the Purchasing Department if/when they occur.
5. Monitor the individual's work performance and adherence to the Independent Contractor Service Agreement (if applicable). Work with contractor to ensure proper and timely reporting, recordkeeping and tax reporting.
6. Authorize invoices for payment following established Accounts Payable procedures.
7. Adjust the BPO, if necessary, upon completion of contract amendments, extensions or other changes.

Human Resource Department:

1. Review submitted Independent Contractor Status Form, Employee/Independent Contractor Questionnaire, W-9, and Independent Contractor Service Agreement.
2. Make determination as to correct status.
3. Approve or reject form.
4. Return determination to requesting department/division.

Purchasing Department:

1. Establish new or update existing vendor records using completed [W-9 Form](#).
2. Review Independent Contract Service Agreement and obtain final legal approval from the college's attorney.
3. Submit the Independent Contract Service Agreement for final signatures by all required parties.
4. Issue BPO for independent contractor or temporary staffing firm as appropriate.
5. Store and maintain all documentation for compliance.

Accounting Department- Accounts Payable

1. Process payment when approved invoices are received.
2. Issue 1099 to Independent Contractor at year-end.

INDEPENDENT CONTRACTOR/EMPLOYEE STATUS FORM

The information provided below will assist Human Resources in determining whether the individual performing the services will be classified for Federal, State and FICA tax purposes as an employee of MCC or as an independent contractor. A copy of the approved form will be returned to you, the hiring manager, so you may take appropriate action.

I have attached the Independent Contractor Questionnaire, a proposed Service Agreement, and any supplemental information which supports the independence of the individual.

I understand that defining the proper status of the individual depends on the manner in which the work is performed and on the nature of the relationship between the individual and MCC personnel responsible for the work being performed. The status of the individual as either an independent contractor or an employee may change if or when the manner in which the work is performed changes or the relationship between the individual and MCC changes. I agree to notify the Human Resource Department if either of these changes occur.

By my signature, I confirm that the information provided in the attached documents is truthful, that I have sufficient knowledge of and responsibility for the work to be performed under this contract, and have the authority to submit this individual for classification as either an employee or independent contractor.

Printed name of individual performing services: _____

Department for whom services are to be performed: _____

Printed name of responsible hiring manager: _____

Signature of responsible hiring manager

Title

Date

Phone Number

To be reviewed and completed by MCC Human Resource Department:

I certify that I have reviewed the attached Independent Contractor Questionnaire Form and supporting documentation and find the individual named to perform the described services to be (in regards to federal employment tax withholding and related reporting purposes):

An Independent Contractor

An Employee

Printed name of HR reviewer

Title

Signature

Date

EMPLOYEE/INDEPENDENT CONTRACTOR QUESTIONNAIRE

Name of Independent Contractor: _____

Project Title: _____

Brief Description of Work:

Project Begin Date: _____

Project End Date: _____

The common law factor and control test is used as a primary vehicle in making a determination of whether the individual should be an employee or an independent contractor. Evidence of the individual's classification must be documented in order to support the final determination. Please answer the following questions truthfully and to the best of your knowledge. There is no "magic" or set number of factors that "makes" the individual an employee or an independent contractor and no one factor stands alone in making this determination. HR uses its professional discretion to look at the entire relationship, considers the degree or extent of the right to direct and control work and documents each of the factors used in coming up with the final determination.

Common Law Factor	Yes	No
1. Does MCC pay other employees to perform functions which are the same or similar to those being performed by this individual?		
2. Is this individual currently an employee of MCC?		
3. Has the individual been MCC's payroll (regular or temporary) at any time in the past 12 months ?		
4. Would MCC want to hire this individual as an employee immediately following the termination of his/her services as an independent contractor?		
5. Does this individual currently work as an independent contractor or consultant for MCC OR has this individual worked as an independent contractor or consultant for MCC in the past 12 months ?		
6. Will the individual be trained by MCC to perform the services in question?		
7. Is the individual instructed about when, where and how work is to be done?		
8. Will the individual have control over hiring and supervising personnel or assistants?		
9. Is the individual required to perform the services personally?		
10. Will the individual be required to provide regular progress reports?		
11. Will the individual perform the services in a prescribed sequence determined by MCC?		
12. Is the individual required to devote a specific amount of time to performing services?		
13. Will MCC provide the individual with any equipment, tools or supplies?		
14. Is the individual required to work specific hours?		
15. Will the individual perform services on MCC's campus?		
16. Could the individual realize a profit or loss as a result of the work to be performed?		
17. Does the individual have a significant investment in tools or other types of instruments that would be used to perform the work?		
18. Can the individual make his or her services available to the general public during the term of the service agreement?		
19. Can the individual perform his or her services for more than one business?		

Common Law Factor	Yes	No
20. Will the individual paid by the: <input type="checkbox"/> hour <input type="checkbox"/> week <input type="checkbox"/> month <input type="checkbox"/> assignment?		
21. Will the individual be reimbursed for business expenses?		
22. Will the individual's services be integrated into MCC's educational or other activities?		
23. Is there a written contract that set forth the terms and conditions of the services?		
24. Does the individual earn employee benefits from MCC?		
25. Is the individual incorporated?		
26. Does the individual have a continuing relationship with MCC?		
27. Can the individual be terminated at MCC's discretion?		
28. Can the individual end his or her relationship with MCC at any time?		