



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 72.05, **Determination of Employee or Independent Contractor Status**

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) Operating Policy and Procedure (HSCEP OP) is to establish the status of a TTUHSC El Paso worker, whether the individual is considered an employee or independent contractor, in compliance with federal regulations relating to payment for services rendered. Each person affected by this HSCEP OP is responsible for developing job procedures and/or other appropriate methods of complying with these requirements.

REVIEW: This HSCEP OP will be reviewed on July 1 of each odd-numbered year (ONY) by the Chief Payroll Officer of Payroll & Tax Services or designee, with recommendations for revisions submitted to the chief operating officer or designee by July 15.

POLICY/PROCEDURE:

I. Employer/Employee Relationship

- A. The business relationship that exists between TTUHSC El Paso and the person performing the services must be defined in order to determine how to treat payments.
- B. The person performing the services may be:
 - 1) An independent contractor
 - 2) A common-law employee
 - 3) A statutory employee, or
 - 4) A statutory nonemployee.
- C. Based upon the facts of the case, final determination of employee or independent contractor status must be made by Contracting or Purchasing. The Human Resources Wage and Salary manager and/or Chief Payroll Officer may be consulted if a decision cannot be reached from the responses to the questionnaire. If there is considerable doubt as to whether a worker is an employee for purposes of income tax and FICA withholding, a determination can be requested from the Internal Revenue Service. While awaiting a ruling, the worker will be treated as an employee for tax purposes to avoid subsequent liability from an adverse opinion.
- D. The institution is responsible for withholding income tax from an employee's wages, reporting the withholding, and remitting withheld amounts to the Internal Revenue Service. If the proper amount is not withheld, the institution is civilly liable for the tax that should have been withheld, as well as for penalties. For this reason, the determination of worker status is extremely important.

II. Common Law Employee

A worker is an employee under common law rules if the person for whom the work is performed has a right to direct and control the worker, both as to the final results and as to the details of when, where and how the work is to be done. Where the employer does not possess that right,

the individual involved is an independent contractor, not an employee. (IRS Publication 15-A/IRC Treas. Reg. § 1.3401(c)-1)

III. **Independent Contractors**

- A. An individual is an independent contractor if TTUHSC El Paso has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.
- B. Payments to Independent Contractors – Payments to independent contractors are to be made in accordance with HSCEP OP series 72, including but not limited to HSCEP OP 72.12, Payments to Nonresident Aliens. The independent contractor must complete and submit the *Independent Contractor Questionnaire*, which can be accessed online at <http://el Paso.ttuhsc.edu/fiscal/businessaffairs/purchasing/>. The questionnaire will then be reviewed and signed by the contract/financial manager, with final review by Payroll & Tax Services. A questionnaire is not required for either (a) purchase of goods, or (b) payments made to partnerships or corporations.
- C. Independent contractor status is not applicable to the services of any individual who, during the current calendar year, has been an employee of the institution; any payment made to such an individual may be processed through Payroll.

IV. **Factors Indicating Independent Contractor Status**

No one factor or group of factors is definitive; all must be weighed against those that indicate an employee status.

- A. The institution for which the services are being performed does not possess the right to instruct the person about when, where, and how the work is to be performed.
- B. The person performing the services ordinarily uses his own methods and receives no training from the institution.
- C. The person performing the services may hire, supervise, and pay other workers under a contract and agree to provide materials and labor while being responsible for the attainment of a given result.
- D. The person performing the services is master of their own time.
- E. The person performing the services is free to work when, for whom, and for as many institutions as he desires.
- F. The person performing the services is paid by the job in a lump sum or on a commission basis.
- G. The person performing the services furnishes his own tools and equipment, subject to the recognition of the fact that in some jobs it is customary for employees to use their own hand tools.
- H. The person performing the services invests significantly in facilities used in performing services and offering such services to the general public.

- I. The person performing the services can realize a profit or suffer a loss as a result of his services.
- J. The person performing the services cannot be fired so long as the result produced measures up to the contract specifications.
- K. The person performing the services agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.
- L. The person performing the services is a physician, lawyer, dentist, veterinarian, contractor, subcontractor, public stenographer, auctioneer, or someone who follows an independent trade in which he offers services to the public.

V. Factors Indicating Common Law Employee Status

- A. The person performing the services is required to comply with instructions (oral, written procedures, or manuals) about when, where, and how the work is to be performed.
- B. The person performing the services is trained by an experienced employee who works with her/him.
- C. The person's services are integrated into the business operations of the institution.
- D. The services must be rendered personally, and the employer is interested in who does the job as well as in getting the job done.
- E. The institution benefiting from the services hires, supervises, and pays the person performing the services.
- F. There is a continuing relationship between the person performing the services and the organization for which the services are performed. Services may be considered continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.
- G. The person performing the services is under the control of the institution (employer) as exhibited by, but not limited to, the following:
 - 1) The institution establishes set hours of work for the person performing the services.
 - 2) Regular reports must be submitted by the person performing the service to the institution.
 - 3) The institution pays business and/or traveling expenses of the person performing the services.
 - 4) The institution furnishes the tools and materials with which to perform the services.
 - 5) The institution possesses the right to set the sequence of work.
- H. The person performing the services must devote full time to the business of the employer rather than engaging in other gainful work. Full time does not necessarily mean an eight-hour day or a five-day week.
- I. The work is performed on the employer's premises; however, doing the work off the employer's premises does not mean, of itself, that no right to control exists.

J. The institution has the right to dismiss the person performing the services, and the person performing the services has the right to end the relationship with the institution at any time without incurring liability.

K. The person performing the services is an employee of another institution, and the person's primary duties are the same as the work to be performed for TTUHSC El Paso.

VI. Right to Change Policy

TTUHSC El Paso reserves the right to interpret, change, modify, amend or rescind this policy in whole, or in part, at any time without the consent of employees.