

The University of Kansas

Office of the Comptroller

December 7, 2006

To: Deans, Directors and Chairs

From: Diane Goddard
Associate Vice Provost/Comptroller

RE: Independent Contractor vs. KU Employee

I would like to provide the University community with some reminders on how to distinguish between an independent contractor to be paid on a contractual services form through the financial system and an employee to be paid through the University payroll system. In general, the vast majority of all payments for services should be made through the payroll system. A contractual services form payment may be appropriate for a guest lecturer who lectures at only a few class sessions, a performer at a university event, and others who follow an independent trade, business, or profession in which they offer their services to the public. Below is more detailed guidance to help you make this determination. Please do not hesitate to contact Debbie Kramer, Assistant Comptroller/CASPUR at 4-5935 or dkramer@ku.edu if you need assistance making this determination. Questions about the tax laws by which independent contractor status is determined should be addressed to Robbie Vannaman, University Tax Analyst, 4-3786, or to the Office of the General Counsel, 4-3276.

The business relationship between the University and the person performing the services must be evaluated to determine whether or not he or she is a University employee. Anyone who performs services for KU is an employee, IF we have the right to control what will be done and how it will be done. We generally have to withhold and pay income taxes, social security, Medicare and unemployment taxes on wages that we pay to an employee.

If we have control only to direct the result of the work and not the means and methods of accomplishing the result, then a person ordinarily is not an employee. If a person is not an employee because the University does not exercise control over him or her, but the person but still performs services for the University, then the relationship usually is one of an independent contractor and should be paid through central accounting services as contractual services.

To determine whether or not an employee/employer relationship exists, we must examine the degree of control and independence. A shorthand method of analysis is to examine three categories: behavioral control, financial control, and the type of relationship of the parties. Because of the complexity of the law in this area, and because it is an area of heightened IRS scrutiny, it is important to contact the individuals listed above in the

event of any uncertainty, particularly if there is doubt that a person is an independent contractor.

Behavioral control: facts that show the department has a right to direct and control how the worker does the task indicate an employment relationship. These include instructions that the worker is given, such as when and where to work, what tools or equipment to use, what work to perform, and what order or sequence to follow.

Financial control: facts that show the department has the right to control the business aspects of the worker's job indicate an employment relationship. These include how the worker is paid. An employee is usually guaranteed a regular wage amount for an hourly, weekly or other period of time. An independent contractor, on the other hand, may have a financial risk in the event of failure to perform, and an independent contractor can be expected to make his/her services available to the relevant market, and not just to the University.

Type of relationship: Facts that indicate independent contractor status include an incorporated status for the individual in question, the existence of a written contract with the University, and the ability to hire and fire associates. Facts that tend to demonstrate an employment relationship include: employee-type benefits, permanency of the relationship, and performance of services that are a key aspect of the regular University business.

If an employee/employer relationship exists, then payments must be made through the University's payroll system. This ensures that appropriate tax withholding and remitting shall occur as well as the issuance of correct tax documents at the end of the year. Likewise, if an independent contractor relationship exists, payment through central accounting services will ensure appropriate tax reporting and compliance. Contracts with independent contractors for professional services are subject to additional scrutiny under the Professional Services Sunshine Law.

In addition --- University employees (administrators) should not personally (with their private funds) pay for services provided by a third party to the University and then seek reimbursement through University or other affiliated funds. Such payment arrangements create a de facto agent relationship between the University administrator and the service provider and they impinge on the proper service classification (payroll/independent contractor determination) and required IRS reporting and withholding. Non-compliance with this policy when making payments to international service providers can result in additional and severe immigration and tax consequences. Under these circumstances, personal payments will not be reimbursed. Questions about these situations should be directed to Robbie Vannaman, University Tax Analyst, 4-3786, or to the Office of the General Counsel, 4-3276.

