

	MOREHOUSE SCHOOL OF MEDICINE OFFICE OF GENERAL COUNSEL POLICIES AND PROCEDURES	POLICY NUMBER	1.02
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	SUBJECT CONSULTANT/INDEPENDENT CONTRACTOR POLICY	SUPERSEDES	

I. PURPOSE

Morehouse School of Medicine (“MSM” or the “School”) engages a wide range of outside service providers and consultants. This policy is required to comply with tax and employment laws and regulations concerning the classification of a service provider as an employee versus an independent contractor, and to promote timely payments to workers. Proper classification of a worker determines the School’s tax withholding and reporting obligations and the system (payroll v. accounts payable) from which the worker should be paid. Misclassification of employees as independent contractors results in a failure to withhold and remit income and employment taxes and exposes the School to IRS assessments of tax, penalties and interest, as well as claims by misclassified workers.

II. DEFINITIONS

Employee: A person hired through Human Resources and paid via payroll. The School controls and directs the service provider’s activities, both in terms of what must be done and how it must be done. An employee may be full-time, part-time or hourly and the position may or may not be benefits eligible.

Independent Contractor: Also commonly referred to as: Contractor, consultant, freelancer, etc. If MSM has the right to control or direct only the result of the work and not the means by which the results are accomplished, the individual or business is considered an independent contractor. Independent contractors are individuals, organizations (either for-profit or non-profit) sole proprietorships, partnerships, corporations, etc., which render services to the general public and meet additional IRS criteria. They usually have a separate workplace and are not directly supervised when they are working for the organization. They often provide a one-time or periodic service, which fulfills a special need of MSM that generally cannot be provided within the organization. They are not entitled to employee benefits, are not covered by workers’ compensation and generally are not subject to federal income tax withholding requirements. Payments to independent contractors are made through the accounts payable system.

Service Provider: An individual about whom a determination is being made as to whether he/she is an employee or independent contractor.

Professional Services Agreement (“PSA”): A contract used to engage a consultant, freelancer, or organization to provide professional services to the School. These service providers are called independent contractors. Standardized PSA contracts are in place and should be used in all cases. Exceptions must be approved by the Office of the General Counsel. Once a PSA is signed by the parties, it has the legal force of a binding contract.

III. APPLICABILITY

This Policy applies to all MSM employees who contract for services on behalf of the School. A department intending to engage a service provider as an independent contractor must follow School approval and contracting procedures before the performance of services.

IV. POLICY

Each service provider must be properly classified as an employee or independent contractor in accordance with federal and state tax and employment laws. All individuals who perform services for the School are presumed to be employees unless the relationship satisfies Internal Revenue Service (IRS) and related common law standards for independent contractor status. This policy applies to payments to individuals, partnerships and sole proprietors for services, **as well as honoraria payments.** Departments that engage service providers must submit the required documentation for determination of each service provider's status **before** any services are performed, a Professional Services Agreement has been executed by all parties, or payment requests are processed.

V. GUIDELINES FOR DETERMINATION OF INDEPENDENT CONTRACTOR STATUS

The procurement of services requires an evaluation of whether a service provider should be classified as an employee or as an independent contractor. This evaluation and classification must be performed **before** engaging the individual to perform services so that the School can comply with its tax withholding and reporting responsibilities, and so payment to the worker will not be delayed.

The IRS has provided guidance for determining a service provider's classification and the primary term used to distinguish the business relationship between a worker and the School is "control." The more control the School has over the worker and the work product, the more likely the worker will be deemed an employee. The IRS currently emphasizes three broad categories: Behavioral control, financial control, and the overall relationship.

Behavioral Control – An independent contractor determines how to accomplish the task. If the School provides training and/or instructions about how to complete the task, the service provider should generally be classified as an employee.

Financial Control – An independent contractor has a significant investment in his/her business and can make a profit or loss due to expenses they incur for such items as tools, materials, equipment and supplies needed to run their business. Contractors make their services available to the public and have a broad customer base. If the service provider works primarily for MSM, the service provider should generally be classified as an employee. Contractors are generally paid a fixed fee based on specific tasks identified in a contract.

Relationship – An independent contractor is not eligible for employee-type benefits such as insurance, vacation, etc. If the School engages a service provider for an indefinite period, rather than for a specific project or period, this is evidence of an employee relationship. In addition, if the services performed are a key aspect of the School's core business (e.g., teaching) this is another indicator of an employee relationship.

These three categories are directly related to and summarized in the "Twenty Factor Test" described in IRS Revenue Ruling 87-41. See Appendix A for the detailed list of factors.

VI. PROCEDURES

- A. To assure compliance with the law, the [Employee/Independent Contractor Certification Form \(Appendix B\)](#) must be completed and affixed to all contracts with independent contractors and consultants.
- B. **A contract to govern the relationship is prepared but not signed by the parties until a final determination has been made regarding the service provider's status.** The [MSM Professional Services Agreement](#) template is available at the Office of General Counsel website (www..edu) and may be downloaded to assist in the preparation of the contract.
- C. The completed Employee/Independent Contractor Certification Form and MSM Professional Services Agreement are submitted to the Office of School Counsel. All contracts must be reviewed and approved by legal counsel and signed by an authorized MSM official.
- D. A purchase requisition is submitted to the Purchasing Department. A purchase order will be issued upon evidence that Step C has been completed. A purchase order is required for all independent contractors, regardless of the value of the assignment.

VII. SPECIAL CIRCUMSTANCES

A. Current and Former School Employees

If the service provider you wish to hire is a current School employee, a former employee (paid through School payroll during the current calendar year) or is providing a service the same as or similar to that of an employee, he or she will be paid as an employee and not as an independent contractor. If employee status is determined, contact Human Resources to establish the service provider as an employee and arrange for payment of his or her services via the MSM payroll.

B. Sponsored Research

Specific granting agency requirements will apply on all sponsored research projects. The Offices of Sponsored Research and Grants and Contracts approval is required on all consulting charges to a grant. In general, consultant services are allowable direct costs on grants and contracts with an approved budget for such costs. Honoraria expenses are unallowable on sponsored grants when the primary intent is to confer distinction on, or to symbolize respect, esteem, or admiration for the recipient of the honorarium except when specifically approved by the granting agency. A payment for services rendered, such as a speakers fee is allowable on grants.

C. Fees, Prizes, and Royalty Payments

The following types of payments are not for services performed. Payment is requested on a request for check unless the recipient is an employee. Employees are paid through the School payroll.

- Royalty or Permission Fee - payment that represents compensation for the sale or use of copyrighted or patented work of an author, composer or inventor.
- Prize or Premium - a reward or gift of money for a competition or other achievement. Prizes and premiums to individuals currently employed at MSM must be paid through the payroll system.

The following types of payments are for services performed by a service provider but do not require "determination procedures." Such one-time payments are typically of a fixed, minimal amount and are taxable to the recipients:

- Participation Fee - payment for participating in surveys, seminars or research projects.
- Human Subject Fee - payment to service providers who volunteer as human subjects in research projects.

D. Students

If the service provider is a student at the School, the same classification rules will be applied and all required documents must be completed and submitted to the Office of General Counsel in order for a student to be classified as an independent contractor. **As a general rule, students will most often be appropriately characterized as employees, not as independent contractors.**

VIII. PENALTIES FOR NONCOMPLIANCE

Penalties assessed by the IRS for incorrect classification will be the responsibility of the originating department. Failure to comply with this policy will result in disciplinary action up to and including termination and reimbursement of improperly expended MSM funds.

IX. RESPONSIBLE OFFICE

The Office of the General Counsel is responsible for the Independent Contractor Policy. Questions regarding this Policy should be directed to (404) 752-1747.

APPENDIX A

Guidance Regarding the IRS 20 Factors Test

As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. The twenty factors are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying the twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement (that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee). The twenty factors are described below:

1. **INSTRUCTIONS.** A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the RIGHT to require compliance with instructions.
2. **TRAINING.** Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.
3. **INTEGRATION.** Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
4. **SERVICES RENDERED PERSONALLY.** If the Services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.
5. **HIRING, SUPERVISING, AND PAYING ASSISTANTS.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.
6. **CONTINUING RELATIONSHIP.** A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7. **SET HOURS OF WORK.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.
8. **FULL TIME REQUIRED.** If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor on the other hand, is free to work when and for whom he or she chooses.
9. **DOING WORK ON EMPLOYER'S PREMISES.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.
10. **ORDER OR SEQUENCE SET.** If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.
11. **ORAL OR WRITTEN REPORTS.** A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.
12. **PAYMENT BY HOUR, WEEK, MONTH.** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.
13. **PAYMENT OF BUSINESS AND/OR TRAVELING EXPENSES.** If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.
14. **FURNISHING OF TOOLS AND MATERIALS.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.
15. **SIGNIFICANT INVESTMENT.** If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the

existence of an employer- employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

16. **REALIZATION OF PROFIT OR LOSS.** A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

17. **WORKING FOR MORE THAN ONE FIRM AT A TIME.** If a worker performs more than *de minimis* services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

18. **MAKING SERVICE AVAILABLE TO GENERAL PUBLIC.** The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. **RIGHT TO DISCHARGE.** The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

20. **RIGHT TO TERMINATE.** If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer/employee relationship.

APPENDIX B

MOREHOUSE SCHOOL OF MEDICINE EMPLOYEE/INDEPENDENT CONTRACTOR CERTIFICATION FORM

The information requested by this form is used to determine whether the individual providing services is an independent contractor under IRS guidelines.

SECTIONS 1, 2 AND 3 OF THIS FORM MUST BE COMPLETED AND SIGNED BY THE INDIVIDUAL PERFORMING THE SERVICES. SECTION 4 MUST BE SIGNED BY THE MSM EMPLOYEE RESPONSIBLE FOR CONTRACTING FOR THE SERVICES.

NO SERVICES MAY BE PERFORMED AND NO PAYMENTS WILL BE MADE UNTIL THIS FORM HAS BEEN COMPLETED, SUBMITTED AND REVIEWED BY ACCOUNTS PAYABLE.

NOTE: IF YOU ARE PERFORMING INDEPENDENT PERSONAL SERVICES AT THE SCHOOL, YOU MUST COMPLETE AN IRS FORM W-9.

Section 1: INDEPENDENT CONTRACTOR INFORMATION

1. Social Security Number (SSN) _____ Employer Identification Number (EIN) _____
_____ or _____

2. Full name of business for the SSN or EIN given above

3. Business address for tax purposes:
Street Address: _____
City: _____
Zip or Postal Code: _____ Country: _____

4. Are you a U.S. Citizen or resident alien: Yes No If no, country of citizenship: _____
Tax status: non-exempt exempt by virtue of tax treaty Treaty country: _____

- If exempt under an applicable tax treaty you must complete a Form 8233 and attach it to this certification.
- If non-exempt, these payments may be subject to withholding under Internal Revenue Code section 1441

5. Did you perform services for Morehouse School of Medicine in any capacity before providing the services that are the subject of this determination form? Yes No
If yes, what were the dates of the prior service?

If yes, explain the differences, if any, between the current and prior services.

INSTRUCTIONS FOR THIS SECTION:

BEFORE an individual is hired as an independent contractor, the following checklist *should* be completed to help determine whether an employer/employee relationship exists. Mistakenly classifying an employee as an independent contractor may result in significant fines and penalties. The questions provided below will assist in determining whether the individual performing services will be classified as an employee of the School for federal, state and FICA tax purposes or as an independent contractor. If you still have questions after completing this checklist, you may want to contact the Office of General Counsel (404-756-6663).

Section 2: DETERMINING WORK STATUS		
1. Current Relationship with Morehouse School of Medicine	YES	NO
A. Does this individual currently work for Morehouse School of Medicine as an employee?	<input type="checkbox"/>	<input type="checkbox"/>
B. Does Morehouse School of Medicine desire to hire this individual as an employee immediately following the termination of his or her services as an independent contractor?	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>If the answer is "NO" to both questions, proceed to questions in Section 2, Classification Guidelines.</i></p> <p><i>If the answer is "YES" to either of these questions, the individual should be classified as an employee and paid through MSM payroll.</i></p>		
C. During the 12 months prior to the date on which the services commenced, was the individual on the MSM payroll (regular or temporary appointment)?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Proceed to Section 2; a "YES" here should be considered a factor weighing toward employee status.</i>		
2. Classification Guidelines (Complete only one section, A, B or C, depending on the services to be performed by the individual.)		
A. Lecturer/Instructor	YES	NO
1. Is the individual a "guest lecturer", e.g., an individual who lectures at only one or two class sessions?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Go to #2
2. Is the individual the primary instructor in a department course being offered for academic credit toward a School degree?	<input type="checkbox"/> Treat as an Employee	<input type="checkbox"/> Go to #3
3. Is the individual responsible for the content of the lecture/presentation (as opposed to presenting materials that have been prepared/dictated by the School)?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Treat as an Employee
B. Researcher	YES	NO
Researchers hired to perform services for a School department are initially presumed to be employees of the School. Please complete the following questions:		

1. Will the individual perform work using School facilities (as opposed to facilities available to him/her outside of MSM)?	<input type="checkbox"/> Treat as Employee	<input type="checkbox"/> Go to #2
2. Will the individual perform research for a School faculty member under an arrangement whereby the School faculty member serves in a supervisory capacity (i.e., the individual will be working under the direction of the School faculty member)?	<input type="checkbox"/> Treat as Employee	<input type="checkbox"/> Go to #3
3. Will the individual serve in an advisory or consulting capacity with a School faculty member or director in a "collaboration between equals" type arrangement?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Go to Section C
<i>If the answer is "NO" to all three of these questions, proceed to Section C.</i>		
C. Individuals Not Covered Under Sections 2A or 2B	YES	NO
1. Does the individual routinely provide the same or similar services outside of MSM to the general public as part of a continuing trade or business?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Go to #2
2. Will the department provide the individual with specific instructions regarding performance of the required work rather than rely on the individual's expertise?	<input type="checkbox"/> Treat as Employee	<input type="checkbox"/> Go to #3
3. Will the department provide the individual with significant equipment or supplies and/or hire assistants for the individual?	<input type="checkbox"/> Treat as Employee	<input type="checkbox"/> Go to #4
4. Will the School set the number of hours and/or days of the week that the individual is required to work, as opposed to allowing the individual to set own work schedule and/or pay the individual an hourly rate similar to what other employees are paid on campus for similar work?	<input type="checkbox"/> Treat as Employee	<input type="checkbox"/> Treat as Ind. Cont.
5. Does the individual engage in entrepreneurial activities in an established business at risk for loss? (In other words, can the individual make a profit or suffer a loss as a result of the work, aside from the money earned from the project.)	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Treat as Employee
6. Does the individual have his/her own insurance for work-related injuries?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Go to #6
7. Does the individual provide similar services to other clients?	<input type="checkbox"/> Treat as Ind. Cont.	<input type="checkbox"/> Treat as Employee

**NOTE: Service Provider must also complete Attachment A
TWENTY FACTOR TEST FOR DETERMINING INDEPENDENT CONTRACTOR OR EMPLOYEE STATUS**

Section 3: CERTIFICATION BY INDEPENDENT CONTRACTOR

Under penalties of perjury, I certify that I am entitled to claim independent contractor status because (1) I offer my services to multiple clients; (2) I have complied with all business licensing requirements; (3) I pay my own federal, state, city income, FICA/MI, and other taxes in accordance with estimated tax requirements; (4) as a contractor, I am not eligible for worker’s compensation, unemployment compensation, or other employee benefits; and (5) I maintain my own set of books and records.

Signature: _____ Date: _____

Section 4: CERTIFICATION BY REVIEWER

Responsible Party (Dean, Department Head) The foregoing statements represent the truth to the best of my knowledge. **If the IRS subsequently determines that employee status should have applied, I understand that all penalties assessed to Morehouse School of Medicine School with respect to this contract may be charged to my department.**

Signature: _____

Title: _____ Date: _____

Section 5: INTERNAL USE ONLY

OGC Approval by: _____ Date: _____

Attachment A

TWENTY FACTOR TEST FOR DETERMINING INDEPENDENT CONTRACTOR OR EMPLOYEE STATUS

Worker's Name: _____ SSN: _____

PLEASE CHECK ONE BOX FOR EACH ITEM	YES	NO
1. Is the worker free to perform services for a number of firms at the same time?	<input type="checkbox"/>	<input type="checkbox"/>
2. Are the worker's services regularly made available to the general public?	<input type="checkbox"/>	<input type="checkbox"/>
3. Must the worker devote substantially full-time to the work?	<input type="checkbox"/>	<input type="checkbox"/>
4. Can the worker realize an economic loss for non-performance other than the loss of payment for personal services?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is the worker free to establish his/her own hours?	<input type="checkbox"/>	<input type="checkbox"/>
6. Has the worker invested in facilities or equipment in order to perform the service?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will a significant portion of the work be done in MSM facilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the worker receive training of any type?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does a continuing relationship exist between the worker and MSM?	<input type="checkbox"/>	<input type="checkbox"/>
10. If assistants are needed, will these be provided by MSM?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the School determine or have the right to determine the order or sequence of the tasks to be completed?	<input type="checkbox"/>	<input type="checkbox"/>
12. Are progress reports required periodically?	<input type="checkbox"/>	<input type="checkbox"/>
13. Will the worker be paid on an hourly, weekly, monthly, or other periodic basis?	<input type="checkbox"/>	<input type="checkbox"/>
14. Will the worker be reimbursed for incidentals?	<input type="checkbox"/>	<input type="checkbox"/>
15. Will MSM furnish tools other than specialized equipment?	<input type="checkbox"/>	<input type="checkbox"/>

16. Is the worker required to comply with instructions about where, when, or how he or she is to work other than general parameters?	<input type="checkbox"/>	<input type="checkbox"/>
17. Does the success of the project hinge on the performance of the worker?	<input type="checkbox"/>	<input type="checkbox"/>
18. Must the service(s) be rendered personally?	<input type="checkbox"/>	<input type="checkbox"/>
19. Can the worker be discharged for convenience as one would an hourly employee as opposed to discharge related to contract requirements?	<input type="checkbox"/>	<input type="checkbox"/>
20. Can the worker unilaterally terminate the work prior to completion without liability?	<input type="checkbox"/>	<input type="checkbox"/>