

INDEPENDENT CONTRACTOR POLICY

POLICY STATEMENT

It is MICA's policy that an individual who is paid to provide services to MICA must be hired as an employee unless the engagement satisfies the three-part independent contractor test defined in section II below.

An independent contractor (IC) is generally an individual who is in an independent trade, business, or profession and offers services to the general public. An IC may work as an individual or through a business entity such as a sole proprietorship, partnership, or limited liability corporation. ICs are sometimes also referred to as consultants, 1099s, contractors, or vendors.

A worker's preference is not relevant to the classification determination, nor is that of the department wishing to engage the individual.

REASON FOR POLICY

Under Maryland and federal law, the College is required to meet a number of obligations with respect to the treatment of employees, including wage and hour requirements, payroll tax withholding, and provision of workers' compensation and unemployment benefits.

Unlike MICA employees, ICs are not paid through the payroll system, do not receive W-2s, are not enrolled in the College's benefits plans, are not covered by the College's workers' compensation program, and are not eligible for unemployment benefits following the contract performance period.

The consequences of misclassifying workers as ICs instead of employees may cause the College to fail to meet its legal obligations and give rise to significant liability, including taxes and related penalties, criminal sanctions, and civil liability. The College has adopted this policy to guide divisions or departments seeking to engage ICs and to establish procedures to ensure that individuals are properly classified as employees unless the strict requirements of the three-part independent contractor test are met.

All proposed IC engagements must be reviewed and approved as set forth in this Policy BEFORE engaging the individual, to ensure proper classification.

WHO MUST COMPLY

All MICA personnel must comply with this policy, as well as any non-employees making purchases on behalf of the College including independent contractors, suppliers, contractors, and subcontractors.

This policy applies to single-employee companies which may be a sole proprietor, unincorporated, incorporated, or a limited liability company (LLC). This policy applies to all individuals engaged directly to perform any service for the College, including those performing work inside and outside of Maryland. In cases when you need to engage individuals for work outside of the United States, MICA must follow the rules and regulations based on the country in which the work is taking place. These provisions may be different than Maryland and US law and are occasionally more stringent (Europe) or entail tax withholdings on payments to contractors.

Special note on limited liability companies (LLCs): an individual providing services will require an Independent Contractor Questionnaire (ICQ) Form even if that individual is operating as an LLC.

However, if an LLC has two or more employees, it falls outside of this policy and an ICQ Form is not required.

This policy does not apply when contracting with vendors/suppliers with more than one employee.

This policy does not apply when the College is contracting with a third-party entity (e.g., temp agency, IT staffing firm) to obtain personnel who are classified by those firms as employees or contractors to perform services.

This policy does not apply to individuals who have been employed as faculty, staff, or student workers and paid through the College's payroll system within the same calendar year the services are to be provided.

NONCOMPLIANCE

An employee shall be subject to the following disciplinary action up to and including termination for failure to comply with this policy. Disciplinary action for the same or different offenses shall progress in the following manner:

1. *Verbal warning.* Verbal statement to employee that they have violated a rule and/or regulation and that such violation may not continue.
2. *Written reprimand.* Formal notification in writing to employee that they have violated a rule and/or regulation.
3. *Termination.* The employer/employee relationship is severed.

RESPONSIBILITIES AND PROCEDURES

I. Responsibility for Compliance

When MICA is directly employing or contracting with an individual to perform a service for MICA, the responsibility for making a correct classification decision rests with the department that is engaging the individual, in consultation with People, Belonging, & Culture (PB&C). **The department is responsible for any liability resulting from a misclassification decision, including fines, penalties, and attorneys' fees.**

- A. The **department seeking to engage the individual** is responsible for initiating the procedure described in this policy. The initial step is to determine whether the policy applies; that is, is the department contracting with a single individual to perform a service (including individuals operating as single-employee LLCs, sole proprietors, or individuals contracted through freelancer marketplaces, and corporations that do not follow a classification process). If the policy applies, all proposed IC engagements must be reviewed and approved consistent with this policy **BEFORE a contract is signed or any services are performed**. This procedure, including approval and documentation to support a proposed independent contractor classification via the Independent Contractor Questionnaire (ICQ) Form, is set out in Appendix A: Independent Contractor Procedures.
- B. The **People, Belonging, & Culture Office (PB&C)** is responsible for reviewing proposed IC engagements to determine whether the worker may be classified as an independent contractor or must be classified as an employee. Unless an exception set forth in Section III applies, PB&C must review and sign the ICQ Form, as evidence of the classification review process.

PB&C is also responsible for ensuring that the department is familiar with and receives

adequate training regarding this policy and its requirements.

PB&C may contact legal counsel to seek guidance on reviewing compliance with this policy.

- C. The **authorized signor** is responsible for ensuring that required documentation that supports the IC classification decision has been completed before any payment is requested. Required documentation includes a signed contract, an approved ICQ Form, and an invoice or signed statement of work.

II. Guidance for Classifying Workers

A. Presumption of Employee Status

Under Maryland and Federal law, every individual receiving payment for services to the College is considered to be an employee of the College unless all of the factors in the following three-part IC test are satisfied.

Maryland IC law is generally more stringent than the guidance provided by the Internal Revenue Service on IC classification. For this reason, MICA will be guided by the Maryland law in making classification decisions.

An independent contractor is an individual who – whether working as an individual or doing business through a business entity such as a sole proprietorship, partnership, or limited liability corporation – provides services pursuant to a contract or other agreement.

A worker's preference is not relevant to the classification determination, nor is that of the department seeking to engage the worker.

B. Three-Part Independent Contractor Test

In order to be classified as an IC for MICA, the worker must satisfy all three parts of the following test. **Failure to meet one or more of these three parts means that the worker must be hired as an employee** – either directly by MICA, or by an outside agency or staffing firm that would place the employee at MICA.

1. **The worker must be free from MICA's control and direction in connection with the performance of the service, both under a contract for the performance of the service and in fact.** In order to be considered an IC, the individual must be able to bring their own approach to the performance of the task. For example, the worker should be free to set their own hours, determine the appropriate tools and methods to use, use their own materials and supplies, set the order in which the services will be performed, and decide where to perform the services. This does not mean that the individual must be free from all direction, but the activities should be carried out with minimal instruction, training, and supervision. The College should have the right only to dictate the desired work product and the deadline for its completion, not the means and methods of accomplishing the result (i.e., where, when, and how the services are performed).

There must be a written contract between MICA and the IC, explicitly stating that the worker has independent control and direction over the work, including the ability to dictate the hours that they will perform the services, and the work should be performed consistent with this statement over the course of the engagement. A purchase order or invoice is not sufficient to satisfy this requirement. (The Finance & Business Services Office makes available professional services agreements, which may be suitable for the engagement. These agreements are available [here](#).)

If there is not a written contract covering the engagement, the worker must be hired as an employee.

2. **The service performed by the worker must be outside the usual course of MICA's business.** Generally, an employer cannot use ICs to perform services within its normal, regular and continuing business operations. The service performed by the individual must be incidental to the operations of the College, rather than a necessary or integrated component of operations. **This assessment should consider whether the service is a regular and continuing part of the operations of the department engaging the worker.** If the service is a regular and continuing part of operations, the individual should be hired as an employee rather than engaged as an IC.

In considering whether the services are in the usual course of business, the duration of the engagement is a significant factor. Longer engagements (for example, those that exceed six months in duration) are more likely to fail this prong of the test, because the services performed may be more likely to be part of the regular and continuing operations of the department.

For example, an accounting department needs to engage a painter to repaint its offices. Assuming that the painter meets the other two parts of the test, the individual can be classified as an IC. However, if the accounting department needs to bring in an additional accountant to assist during the busy season, that individual could not be classified as an IC even if they met the other two parts of the test, because accounting services are a regular and continuing part of the accounting department's operations.

3. **The worker must be customarily engaged in an independently established trade, occupation, profession, or business of the same type as the service being performed for MICA.** To be an IC for MICA, the worker must be operating an independent business enterprise which offers its services to other clients or customers besides MICA. The individual must be capable of performing the services for other entities and should not be solely dependent on MICA for work. The fact that the person may perform work for MICA off-site is not relevant; the test is whether the person is regularly engaged in providing or offering such services for others in addition to MICA. It also is not relevant whether the individual would be providing services as an individual or through a corporate entity (e.g., LLC, partnership, or other corporation).

Projects that require the worker to devote all or a substantial majority of their working time to MICA, thereby precluding work for others as a practical matter, should be limited in duration to ensure that the worker is not in effect working solely for MICA over an extended period.

III. Independent Contractor Status Determination

The department must confirm that the classification satisfies the three-part IC test set forth above using the ICQ Form. The department can independently make this determination in the following circumstances.

A. Single, Short-Term Engagements for Less than \$1,000

- (1) the engagement satisfies the three-part IC test set forth above;
- (2) the engagement will last no longer than **three months (90 calendar days)**;
- AND
- (3) total payments to the IC **will not exceed \$1,000**

OR

B. Guest Speakers or Guest Lecturers

Hosting a guest speaker or guest lecturer receiving an honorarium or speaking fee for a **one-time speaking engagement**. Performers and musicians may also fall into this category.

If neither of these conditions are met, PB&C must review and sign the ICQ Form, as evidence of the classification review process.

IV. Record Retention

Follow MICA's general records retention schedule regarding record retention. ICQ Forms should be retained for at least 7 years after the contract has ended.

RESPONSIBILITIES AND CONTACTS

Authorized signor is responsible for ensuring that required documentation that supports the IC classification decision has been completed before a supplier invoice request is created in Workday or any payment is issued. Required documentation includes a signed contract, an approved ICQ Form, and an invoice or signed statement of work.

Signatory authority for contracts based upon the total value of the contract is as follows:

- \$100,000 and above: President; VP of Finance & Business Services; Provost;
- More than \$10,000 but less than \$100,000: Vice Presidents
- Up to \$10,000: Vice Provosts and AVPs, and Directors, Department Chairs, and Associate Deans with signatory approval delegated by the division Vice President

Department considering engaging an individual to perform services is responsible for initiating the procedures described in this policy. Departments must secure proper review and approval of an ICQ Form, **before a contract is signed or any services are performed.**

Finance & Business Services Office is responsible for acting as a resource for questions regarding this policy. It also may provide training resources regarding this policy.

People, Belonging, & Culture Office (PB&C) is responsible for reviewing IC classification decisions and seeking guidance on difficult classification questions. PB&C is responsible for maintaining this policy, together with the Finance & Business Services Office. It also may provide training resources regarding this policy.

Payroll Office is responsible for notifying PB&C and of any changes to federal or state regulations around independent contractors and acting as a subject matter resource for any questions around this policy.

APPENDICES

[Appendix A: Independent Contractor Procedures](#)

[Appendix B: Independent Contractor Questionnaire \(ICQ\) Form](#)