

Independent Contractor Policy



Responsibility for policy: Director of People and Capability

Approving authority: Vice-Chancellor

Last reviewed: March 2022

Next review: March 2027

Application

1. This policy applies to all staff of the University of Waikato.

Purpose

2. The purpose of this policy is to:
 - a. ensure that only bona fide independent contractors are engaged by the University under an independent contractor contract, and
 - b. reduce the risks to the University associated with defining individuals as independent contractors when they should be regarded as employees.

Related documents

3. This policy should be read in conjunction with the following:
 - [Employment Relations Act 2000](#)
 - [Independent Contractor Agreement Template](#)
 - [Supplier Contract Management Manual](#)

Definitions

4. In this policy:
 - employee** means a person employed by the University under an employment agreement
 - employment agreement** means a contract of service between the employer and an employee and includes an employee's terms and conditions of employment
 - independent contractor** means a person or organisation who supplies labour services through contract for service. Those who supply the labour services are not employees of the University, but are employees of another organisation, or are self-employed
 - independent contractor contract** means a written document that sets out the contractual arrangements and the outcomes to be delivered by the independent contractor.

Responsibility for entering into and managing independent contractor contracts

5. The responsibility for entering into and managing independent contractor contracts rests with the relevant manager ('job manager') and their Head of School, Director or equivalent.
6. An independent contractor contract may only be used where the tests in Table 1 of this policy are satisfied; if tested in law, the decision will depend on the real nature of the relationship. If the majority of the answers to the questions in Table 1 of this policy are 'yes' and if the real nature of the relationship can be demonstrated to be that of an independent contractor, managers may use an independent contractor contract; in all other circumstances an employment agreement must be used.
7. If doubt exists whether an independent contractor relationship is truly in place, the relationship must be considered to be one of employer/employee and an employment agreement must be used.
8. Use of an independent contractor contract does not in itself create an independent contractor arrangement; failure to ensure that the majority of the tests set out in Table 1 of

this policy are satisfied before engaging a person or organisation under an independent contractor contract may expose the University to the following risks:

- a. If the IRD is able to establish that the real nature of the relationship is that of employer/employee and that the independent contractor is in fact an employee, the University risks prosecution for failing to deduct PAYE tax.
 - b. If an independent contractor is able to establish through application to the Employment Authority or Court that in fact the real relationship with the University is one of employer/employee, they can then seek the normal protections afforded by employment law. (This may include redress for unjustified dismissal or claims for back payments in relation to an applicable collective agreement.)
9. Table 2 of this policy sets out the requirements of the University with respect to the treatment of taxation and other payments for independent contractors versus employees.
10. The University's [Independent Contractor Agreement Template](#) must be used as the basis for an independent contractor contract, unless agreed otherwise by the Director of People and Capability.
11. Specific advice about the use of the [Independent Contractor Agreement Template](#) is available from the Director of People and Capability.
12. Staff assigned to manage contracts under clause 5 of this policy are responsible for:
- a. providing a copy of the signed contract to the independent contractor
 - b. providing a copy of the signed contract to the Chief Financial Officer for use in monitoring the University's financial commitments and to help forecast cash flow requirements
 - c. uploading an electronic copy of the contract, signed by both parties, to the Central Contracts Register within [Unimarket](#)
 - d. ensuring that the University receives the relevant goods or services at the agreed price and service levels, and
 - e. managing associated risks as set out in the [Supplier Contract Management Manual](#).

Responsibility for monitoring compliance

13. The Director of People and Capability is responsible for monitoring compliance with this policy and reporting any breaches to the Vice-Chancellor.
14. Breaches of this policy may result in disciplinary action under the [Staff Code of Conduct](#).

TABLE 1

CONTROL TEST		
	<i>Independent Contractor</i>	<i>Employee</i>
Does the independent contractor have control over how, where and when the work is done (within practicality)?	Yes	No
Is the independent contractor responsible for quality and pricing?	Yes	No
Does the independent contractor supervise the job and can the contractor hire other people to do the work?	Yes	No
INTEGRATION TEST		
	<i>Independent Contractor</i>	<i>Employee</i>
Is the type of work different from that normally done by other individuals who are employees?	Yes	No
Does the independent contractor pay for any expenditure incurred in doing the job?	Yes	No
Does the independent contractor invoice the University?	Yes	No
Is the independent contractor carrying out work done previously by independent contractors? (or has the work normally been done by employees i.e. custom and practice)	Yes	No
Has the independent contractor always worked with the University as an independent contractor? (guide to intention)	Yes	No
ECONOMIC REALITY TEST (Fundamental Test)		
	<i>Independent Contractor</i>	<i>Employee</i>
Does the independent contractor supply the necessary tools, vehicle, office, phone etc.?	Yes	No
Does the independent contractor provide consultancy advice?	Yes	No
Is the independent contractor free to work for other organisations?	Yes	No
Is the independent contractor paid pursuant to a pre-arranged negotiated fee?	Yes	No
Is the independent contractor responsible for tax payments and ACC levies?	Yes	No
Do payments include GST?	Yes	No
Is the independent contractor responsible for any loss or profit?	Yes	No
Is the independent contractor exposed to any financial risks?	Yes	No
Is the independent contractor required to arrange their own insurance, including public liability cover?	Yes	No

Is the independent contractor liable for correcting sub-standard work?	Yes	No
Could the University sue the independent contractor for loss?	Yes	No
If the work is not done to specification, can payment be stopped?	Yes	No

INDUSTRY PRACTICE TEST			
		<i>Independent Contractor</i>	<i>Employee</i>
Is there an Industry Practice as to whether the work is generally performed by independent contractors or employees?	Yes		No
If so, is the Industry Practice to use contractors to carry out this work?	Yes		No

TABLE 2

Taxation and Other Payments	Independent Contractor (Sole Trader or Company)	Employee
Tax	The requirement to deduct tax will vary depending on whether the independent contractor operates as a sole trader or company, and on the nature of the services to be performed. The Inland Revenue withholding tax rules will be applied. Further information is available from the Chief Financial Officer.	University deducts PAYE
ACC Payments	Independent contractors responsibility	University's responsibility
Insurance	An independent contractor should have public liability insurance unless the contract specifies otherwise or the services are provided on University premises	University primarily responsible
Termination	According to contract - High Court overview	Justification required - Employment Relations Act
Holiday and Sick Pay	Not applicable (may be paid by the independent contractor to own employees)	University responsibility, subject to Employment Agreement and Holidays Act

NB: Payments will be made in New Zealand dollars unless agreed otherwise by the Chief Financial Officer.