

Employee or Independent Contractor

Misclassification of employees as independent contractors is prevalent in many businesses, private and public. A person hired to perform services for pay is presumed by law to be an employee unless he/she meets the definition of an independent contractor or qualifies under a specific exemption provided by federal and state law. An employer classifying a service provider as an “independent contractor” must be able to prove that he/she meets the legal definition of “independent contractor.”

Two broad principles apply for qualification as an “independent contractor”:

1. The independent contractor must be free from the District’s control and direction over how the service is performed.
2. The independent contractor must be customarily engaged in an independent trade, occupation, profession, or business related to the service being performed.

The Internal Revenue Service (IRS) uses common law rules to determine if an individual is an [Independent Contractor or Employee](#). The IRS guidelines will assist you with determining the degree of control and independence the individual may or may not possess.

Additionally, under section 102.07(8) of the Wisconsin Statutes, “a person is required to meet a nine-part test before he or she is considered an independent contractor rather than an employee”. To be considered an Independent Contractor and not an employee, an individual must meet and maintain all nine requirements [IC Definition Unders102.07 \(8\).pdf](#).

The worker does not have the option of choosing independent contractor status, nor will a signed contract or agreement convey independent contractor status if the common law factors indicate otherwise. Misclassification can result in employer liability for state and federal tax withholding, social security and Medicare withholding, state Worker’s Compensation, and the employer’s share of Medicare and social security.

Therefore, to ensure that everyone with authority to initiate Professional Services Contracts has current, comprehensive information and to avoid the risk of incurring significant IRS penalties, unnecessary Worker’s Compensation claims against the district and even years of service claims for retirement purposes this *Manager’s Guide to Professional Services Contracting* was developed by Business Services representatives from Procurement and Human Resources.

This guide applies to anyone wishing to contract for supplemental services to be paid by Kenosha Unified School District regardless of the source of funds. A school or department intending to engage a service provider as a consultant or hire an independent contractor must follow KUSD’s approval and contracting procedures prior to the start of any work or performance of services.

Contractor or Consultant

Generally, a Consultant is a self-employed independent business person who has a special field of expertise or skill. The consultant provides professional or expert opinion, advice or services regarding information or materials in his or her field of knowledge or training to assist others in making decisions or in performing tasks.

A Contractor is a self-employed independent business person who agrees (contracts) to do work for another usually for a fixed price. It is usually an 'arms-length' transaction. The individual hiring the contractor defines the desired results and the schedule. The contractor may supply labor only or labor and supplies. The Contractor generally retains control over the work to be done including the means and methods used to do the job, the scheduling of the underlying work, who performs the work and determines how the work will get done within the standards and time requirements set. A contractor will generally use his own tools and work equipment and may employ others to do the work for them.

Professional Services Consultant

Intent: Kenosha Unified School District intends to comply with all applicable Federal and State laws relative to the use of independent contractors, and to apply their use as part of sound fiscal management.

Guideline: KUSD intends to hire individuals as full-time and part-time employees for its regular work force and to meet its short-term labor needs by hiring temporary employees. However, on occasion, in order to meet District objectives, it may be necessary to consult with experts in a particular field and to engage individuals for specific periods and/or specific assignments to provide short-term expertise.

An independent contractor is not intended to be a substitute for a regular or temporary employee. A KUSD employee is not eligible to perform work as an independent contractor during the same year in which he/she works as a KUSD employee.

Before an individual can provide services as an independent contractor or consultant, [Board Policy 4332](#) Criminal Background Checks states that *"a criminal background check must be completed on any persons who have District approved access to children in supervised or unsupervised settings before they will be allowed to come in contact with students. This includes but is not limited to volunteers, tutors, mentors and independent contractors."*

Roles and Responsibilities

District/Hiring Managers

- Have individual complete the [Background Check](#)
- Ensure that the individual has also completed [Independent Contractor Request Checklist](#) and reviewed Wisconsin Statutes 102.07(8)
- Send individuals background check form and checklist to Human Resources
- Ensure that the individual has been certified by Human Resources prior to beginning any work
- As a KUSD's representatives, initiate and ensure complete authorization of a [Professional Service Agreement](#) and purchase document after independent contractor has been certified
- Have individual complete a [Form W-9](#)
- Approve all invoices upon receipt from independent contractor by signing, dating and including purchase document number.

Human Resources

- Review and/or perform Criminal Background Check in accordance with Board Policy 4332
- Review Independent Contractor Request Checklist and make a determination regarding contractor status
- Notifies the school/department if individual does not meet the test for independent contractor status (the individual must then be hired as a temporary employee, consistent with existing labor agreements and/or employee handbook and paid accordingly)

Procurement

- Partner with Human Resource representatives to maintain the relevant guidelines
- Refer any inconsistent paperwork to Human Resources for review and resolution
- Ensure up-to-date requirements for independent contractors are maintained and current information made available to managers
- Ensure checklist and background form are signed by an HR Administrator and are attached to the Professional Service Agreement
- Notifies the school/department if individual does not meet the test for independent contractor status (the individual must then be hired as a temporary employee, consistent with existing labor agreements and/or employee handbook and paid accordingly)

Manager's Guide to Professional Services Contracting



Accounts Payable

- On receipt of approved invoice, issues check directly to contractor.
- Ensures that the contractor is paid only with purchase documents and completed Human Resources Certification
- Generates IRS Form 1099s for tax reporting purposes

Working after Retirement

- After you retire, you may work for a private company that is not performing services for a WRS employer (or work for a public employer not affiliated with WRS) without limitations.
- If you retire on or after July 2, 2013 return to work for a WRS-affiliated employer, you are subject to specific [Working After Retirement Rules](#)
- If you are a disability retiree, you may have different working after retirement rules. Contact HumanResources@kUSD.edu
- If you are a co-beneficiary or survivor beneficiary, you are not subject to any employment or working after retirement limitations.

Please Note the Following

If a contractor is hired who has employees, the District must also verify that the contractor has workers' compensation insurance for those employees. KUSD may verify insurance coverage by requesting a certificate of insurance from the contractor's insurance company. If the contractor does not have workers' compensation insurance for its employees, KUSD can be held responsible for the workers' compensation insurance for the contractor's employees.

This guide applies to individuals doing business in their own name or an assumed business name. The checklist is not required for doing business with an established business entity with multiple employees.