

# HIRING GUIDELINES FOR SUMMER CAMPS

## Hiring Current Full-Time MSU Employees for Supplemental Work

If the person you wish to hire for your camp is a regular, full-time MSU salaried (exempt) employee, a hardcopy Personnel Action Request (PAR) marked "Supplemental for Full-Time Employees" should be processed. The employee will not have to complete any paperwork since required documentation was secured for his/her primary position and employment, e.g. MSU Application, Background Consent Form, Form I-9, etc. and employment conditions have already been met.

If the person you wish to hire for your camp is a regular, full-time MSU hourly (non-exempt) employee, the individual must be hired on an hourly basis and paid overtime. Caution is suggested when considering this type of employment for the obvious budgetary impact. The employee cannot be paid via a salary, unless compensation personnel in Human Resources approve the salary at the "weighted average" as required by the Department of Labor. If a decision is made to hire a regular, full-time non-exempt employee for the camp after careful consideration, a hardcopy PAR marked "Supplemental for Full-Time Employees" should be processed. Again, no paperwork from the employee is necessary for the above stated reasons.

NOTE: A full-time employee, working via a supplemental appointment, is expected to perform camp duties outside of normal work time.

## Hiring a Person for Camp that is Already a Current Part-Time/Temporary Employee at MSU

If the person you wish to hire for your camp is already working part-time or temporary for MSU, the University discourages additional assignments because it may result in: 1) unintended overtime issues, 2) difficulty tracking hours/overtime between both departments, 3) paying an employee at a "weighted average, and/or 4) a violation of University policy for attempting to place the employee on different payrolls (prohibited by University Administrative Regulation 300.04).

It is essential you ask each individual you are considering for employment about his/her current work status and determine if he/she is a current employee and under what circumstances. Then, if you still wish to hire such an individual, contact the Office of Human Resources to discuss the implications of such an employment decision. If the HR Office does not believe the employment of such an individual is in the best interest of the University or violates any policy and the departmental representative disagrees, the appropriate Vice President/Provost will make a final determination.

If Human Resources approves an additional part-time appointment for a current part-time/temporary employee, the hiring department should process the employment via the employee payroll by initiating a hardcopy PAR and marking "Supplemental for Part-Time/Temporary Employees." The employee will not have to complete any paperwork since it was completed for their primary position/employment, e.g. MSU Application, Background Consent Form, Form I-9, etc. and employment conditions have already been met. See student section relating to dual appointments as well.

NOTE: A part-time employee, working more than one part-time appointment, is expected to perform camp duties outside of normal work time of the other appointment. If this is not possible, the individual should not be employed for camp work.

### **Hiring MSU Students**

If the person you wish to hire for your camp is a student and actively taking classes during the time period of employment or any portion of the employment, then process the employment via the student payroll. Please note that STUDENTS CURRENTLY ENROLLED ARE LIMITED TO 20 HOURS PER WEEK. Paperwork needed by Financial Aid is an Institutional Request Form. If the student has never been in the student employment program or hasn't been a student employee in the past three years, an Application for Student Employment and Background Consent Form, Form I-9 (with required documents), Drug and Alcohol-Free Workplace Statement and tax forms will also be required.

If the person you wish to hire for your camp is a student and NOT actively taking classes during the time period of employment or any portion of the employment, then process the employment via the employee payroll. The department will process a Part-Time/Temporary workflow via Datatel/Colleague. STUDENTS NOT CURRENTLY ENROLLED (ON EMPLOYEE PAYROLL) CAN WORK UP TO 40 HOURS PER WEEK. An MSU Application for Employment and Background Consent Form should be forwarded to HR prior to employment so a record can be created for the person and so you can enter the workflow prior to employment. Other employee documents (Personal Data Sheet, Drug and Alcohol-Free Workplace Statement, tax forms, and Form I-9) can be collected on or before the first day of employment.

If the student you wish to hire for your camp is already working part-time or temporary somewhere else on campus, many of the same issues outlined in the paragraph "Hiring a Person for Camp that is Already a Current Part-Time/Temporary Employee at MSU" can occur. In addition, students cannot be on both the student and employee payrolls at the same time; therefore, if the employment recommendation would create this type situation, you will need to work with the Offices of Human Resources and Enrollment Services (Financial Aid) and the other hiring department to coordinate such a hiring action. Any such action that would not be deemed to be in the best interest of the University or that violates University policy as determined by the Office of HR or Enrollment Services (Financial Aid) will not be approved. Disagreements will be resolved by the appropriate Vice President/Provost. If the student can be hired, then process the employment on the agreed upon payroll. If the employment is to be processed on the employee payroll, then submit a hardcopy PAR marked "Supplemental for Part-Time/Temporary Employees" along with the documents indicated in the second paragraph of this section. If the employment is to be processed on the student payroll, then submit an Application for Student Employment, along with the other documents outlined in the first paragraph this section.

NOTE: A part-time student, working more than one part-time appointment, is expected to perform camp duties outside of normal work time of the other appointment. If this is not possible, the student should not be employed for camp work.

### **Hiring Off-Campus Individuals (Non-Employees and Non-Students)**

For any other person you wish to hire that is not listed above, you will hire the individual on the employee payroll by processing a Part-Time/Temporary Workflow via Datatel. An MSU Application for Employment and Background Consent Form should be forwarded to HR prior to employment so a record can be created for the person and so you can enter the workflow prior to employment. Other employee documents (Personal Data Sheet, Drug and Alcohol-Workplace Statement, state and federal tax forms, and Form I-9) can be collected on or before the first day of employment.

### **For All Hiring Requests Listed Above:**

PARs, Workflows or Requests for Student Appointments should be processed as soon as possible or at least 2-3 weeks prior to the appointment in order to allow sufficient time for approvals and processing and avoid missed payrolls and violations of the law, specifically relating to background checks and eligibility to work (Form I-9). If there is a rare situation in which the hiring action cannot be submitted in a timely manner, it is essential for the individual overseeing the camp to collect a new Form I-9 on or before the first day of work and work with the Office of Human Resources to secure a background check. Payment will be processed based on regular payroll deadlines providing all documents have been secured for processing. Required deductions for appropriate taxes and benefits will be taken from these wages.

### **Reimbursement to Conferences or Associations**

If an Association or Conference (e.g. KHSAA or OVC) designates officials to work at athletic camps and the Association or Conference will be paying the officials, a Check Request can be processed to the Association or Conference (not an individual) for reimbursement of expenses. The Association or Conference will be responsible for compensating the officials. Check Requests must be accompanied by proper supporting documentation from the Association or Conference, e.g. invoice from KHSAA.

### **Independent Contractors vs. Employees (Definitions and Guidance)**

This section should be read if you believe there is an individual you wish to hire for your camp that could possibly be an independent contractor rather than an employee. This will be rare in that most individuals hired for camps will fall under the "employee" classification. Representatives from the Offices of Support Services and Human Resources will make a final determination as to whether or not an independent contractor relationship exists when there is a situation in question.

The characterization of individuals as **independent contractors** or **employees** has important tax and non-tax consequences to both the University and the individual. It is generally more advantageous to our University to have an individual classified as an employee. During employment tax audits, the Internal Revenue Service (IRS) will almost always treat individuals as employees, absent a reasonable basis for classification as an independent contractor by the employer. Misclassification of an individual can be very expensive to the University, so it is essential that proper characterization of an individual be determined before any payments are made to that individual for services performed.

Before you hire a person to provide services, determine the type of business relationship that exists between MSU and the person: **independent contractor or employee**. IRS and University policies require that MSU classify all workers correctly. Misclassification of employees may result in significant penalties.

Generally, anyone who performs services for you and receives payment is your employee if you can control what will be done and how it will be done. For federal tax purposes, the relationship of employer and employee will exist when the University has the right to control and direct the individual who performs the services, not only as to the results to be accomplished by the work, but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the University not only as to what shall be done, but also as to how it shall be done. It is not necessary that the University actually direct or control the manner in which services are performed; it is sufficient if the University has the right to do so. If an employee/employer relationship exists, then payments must be made through the University's payroll system. This ensures that appropriate

background checks, benefits, tax withholding and remitting shall occur as well as the issuance of proper tax documents at the end of the year.

Telling the difference between an employee and a consultant/independent contractor is not usually difficult: your instinct is probably right. If you provide the person in question with an office, a computer, a telephone, and other tools of the trade; if you expect this person to show up to work on a schedule you set; if this person doesn't have the option to say no to an assignment from you; if this person does not routinely accept assignments to do similar work on other projects, then this person is your employee. You must budget for, and pay, wages plus applicable fringe benefits due that person. To help determine whether a worker is an employee or an independent contractor, the IRS identified 20 factors that we should consider when making that determination. These factors, set forth in Revenue Ruling 87-41, were based on the circumstances that the courts identified and relied upon to decide whether an employment relationship existed. Not all the factors must be present to find an employee/employment relationship, but the factors are guides to use to assess the likelihood as to whether an individual is an employee or an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Each situation must be evaluated on a case-by-case basis. The 20 factors are listed below:

1. **Instructions.** An employee must comply with instructions about when, where and how to work. The control factor is present if the employer has the right to require compliance with the instructions.
2. **Training.** An employee receives on-going training from, or at the direction of, the employer. Independent contractors use their own methods and receive no training from the purchasers of their services.
3. **Integration.** An employee's services are integrated into the business operations because the services are important to the business. This shows that the worker is subject to direction and control of the employer.
4. **Services rendered personally.** If the services must be rendered personally, presumably the employer is interested in the methods used to accomplish the work as well as the end results. An employee often does not have the ability to assign their work to other employees; an independent contractor may assign the work to others.
5. **Hiring, supervising and paying assistants.** If an employer hires, supervises and pays assistants, the worker is generally categorized as an employee. An independent contractor hires, supervises and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
6. **Continuing relationship.** A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. The IRS has found that a continuing relationship may exist where work is performed at frequently recurring intervals, even if the intervals are irregular. There are some situations when independent contractors work on a continuing basis and there is no evidence of an employer-employee relationship, such as consultants, attorneys, and architects.
7. **Set hours of work.** A worker who has set hours of work established by an employer is generally an employee. An independent contractor sets his/her own schedule.
8. **Full time required.** An employee normally works full time for an employer. An independent contractor is free to work when and for whom he or she chooses.
9. **Work done on premises.** Work performed on the premises of the employer for whom the services are performed suggests employer control, and therefore, the worker may be an employee. Independent contractors may perform the work wherever they desire, including the premises of the employer, as long as the contract requirements are performed.

10. **Order or sequence set.** A worker who must perform services in the order or sequence set by an employer is generally an employee. Independent contractors perform the work in whatever order or sequence they may desire.
11. **Oral or written reports.** A requirement that the worker submit regular or written reports to the employer indicates a degree of control by the employer. However, independent contractors are often required to submit regular or written reports if there is a requirement of such in the contract.
12. **Payments by hour, week or month.** Payments by the hour, week or month generally point to an employer-employee relationship.
13. **Payment of expenses.** If the employer ordinarily pays the worker's business and/or travel expenses, the worker is ordinarily an employee. However, independent contractors may also be reimbursed for travel and business expenses.
14. **Furnishing of tools and materials.** If the employer furnishes significant tools, materials and other equipment by an employer, the worker is generally an employee. Independent Contractors usually furnish their own tools, materials and other equipment.
15. **Significant investment.** If a worker has a significant investment in the facilities where the worker performs services, the worker may be an independent contractor.
16. **Profit or loss.** If the worker can make a profit or suffer a loss, the worker may be an independent contractor. Employees are typically paid for their time and labor and have no liability for business expenses. In addition, employees don't have a risk of suffering a loss or an opportunity to make a profit.
17. **Working for more than one firm at a time.** If a worker performs services for a multiple of unrelated firms at the same time, the worker may be an independent contractor.
18. **Making services available to the general public.** If a worker makes his or her services available to the general public on a regular and consistent basis, the worker may be an independent contractor.
19. **Right to discharge.** The employer's right to discharge a worker is a factor indicating that the worker is an employee.
20. **Right to terminate.** If the worker can quit work at any time without incurring liability, the worker is generally an employee. Independent contractors, as well as the employer, typically incur some sort of liability for termination of a contract.

For any person to be contracted for the camp that would not be considered an employee but rather an independent contractor, payment should be made using a Personal Services Contract. This process is handled in the Office of Support Services and their processing guidelines should be used when contracting for personal services (visit <http://www.moreheadstate.edu/support> for more information).