

# Hiring or engaging a worker for a non-U.S. location

## Purpose

Employing or engaging individuals to carry out activities in non-U.S. locations can be challenging. Finding the right talent, understanding what to pay and complying with payroll, taxation and legal right to work requirements in foreign countries can be complex. As in the United States, most other countries have laws governing the employment status of workers in that country. It is important to ensure we understand Dartmouth's obligations regarding international activities and that any proposed activities we might conduct are compliant with those laws. Failure to properly understand and follow the laws and guidelines can expose Dartmouth and the individual to taxes, additional liabilities and potentially legal penalties. The purpose of these guidelines is to ensure that international aspects of your research, project, or program are conducted in a compliant manner. These guidelines should be followed, and the documentation completed and submitted prior to engaging anyone to provide services outside the United States.

## Stakeholders

- All faculty and staff who engage individuals to perform services, process transactions related to the services and/or authorize payments outside of the U.S.
- Global Dartmouth/Provost Office
- Controller's Office
- Human Resources
- Payroll
- Procurement
- Accounts Payable
- Risk and Internal Controls
- Office of General Counsel

## General Statement of Procedures

Engaging an individual to perform services for Dartmouth outside of the United States requires an evaluation process led by a team from Human Resources (HR), Global Dartmouth, Controller's Office, Office of General Counsel (OGC), Risk and Internal Controls, and Procurement to determine whether the individual should be classified as an employee or an independent contractor and whether Dartmouth has the necessary infrastructure in place to support the contemplated arrangement. This classification and Dartmouth's capacity to enter into such arrangements has implications on how the individual will be paid as well as their tax and immigration status.

## Scope of Policy – Types of Hires

There are many different types of roles for which you may be hiring or engaging individuals to conduct overseas-based activities including, but not limited to: short-term consultants, lecturers, data collectors, translators, researchers, and program administrators or directors. These resources fall into one of the following categories:

- Employee
  - Typically, an individual is classified as an employee if Dartmouth can control what will be done and how the work is completed. An employee can be an individual who

works in either a part-time or a full-time position and is a citizen of any country. For most locations outside the U.S., Dartmouth is required to withhold taxes and provide other statutory benefits (i.e.: Social Security or retirement, overtime, medical, etc.) for these individuals. When working as an employee in a foreign country, these individuals may not be eligible for U.S. benefits and the laws in the country in which the work is performed govern the various employment requirements.

- If an individual is an employee in the U.S. and is planning to relocate and work outside the U.S. for an extended period, the individual's employment status needs to be reviewed based on the circumstances of the work to be performed in the non-U.S. location.
- Independent Contractor
  - Generally, an independent contractor is an individual hired to provide services, but Dartmouth doesn't control how the services are performed. Independent contractors are individuals who are not considered to be employees, are not eligible for College-provided benefits, and are not paid through payroll. Payments are made to the contractor through Accounts Payable and the College generally does not withhold amounts for taxes of any kind.

#### Excluded from policy

- Companies
  - Companies (not individuals) that are paid to perform services or supply equipment are excluded from review under this policy. Payments to a company are through Accounts Payable.
- Faculty on Sabbatical
  - Dartmouth U.S. based faculty on sabbatical completing their research or academic work outside the U.S. are excluded from review under this policy.
- Field work
  - Dartmouth U.S. based faculty, staff, and students completing field work out of the country for temporary periods of time (not more than 90 days) are excluded from review under this policy.
- Subcontracts
  - Hiring through a subcontract or agreement with another organization (not an individual) in the country where work is taking place does not require review under this policy. This assumes the subcontract or agreement with the third party clarifies that they are responsible for compliance with employment and other tax law.
- Temporary Travel by U.S. Based Employee
  - A Dartmouth U.S. based employee working outside the U.S. for a temporary basis of less than 30 days in a calendar year is exempt from review under this policy unless the work includes providing services payable by or charged to a non-Dartmouth entity in the foreign country.

#### **Implications**

Risks associated with overseas hires or engagements:

Before engaging an individual to perform work for Dartmouth, we need to establish if that person should be classified as an employee or as an independent contractor. There are several reasons it is

essential to make this determination before hiring a resource. Specifically, Dartmouth must ensure compliance with:

- **Local statutory employment and tax requirements.** If an individual is determined to be an employee, Dartmouth may be required to withhold income tax, pay social security/retirement and provide minimum benefits required by law. Noncompliance can lead to back payments as well as legal fees and fines.
- **Immigration laws.** It is essential to retain only individuals who have a legal right to work in the overseas locations. If an individual is determined to be an employee, Dartmouth is required by law in most countries to ensure the individual is eligible to work in that country.
- **Permanent Establishment Risk.** If Dartmouth is viewed as having employees working in a country, it may give rise to Permanent Establishment Risk. This means that Dartmouth could be required to register as doing business in the location and to pay local corporate taxes. Dartmouth's "not for profit" status is only valid in the U.S. and most overseas tax authorities will not view Dartmouth as a "not for profit".
- **Intellectual Property.** The laws of the country in which an individual is working must be reviewed to determine how rights in intellectual property are allocated between employer and employee and client and independent contractor and the extent to which default legal rules can be modified to achieve the College's desired result.
- **Data Privacy/Protection.** Many countries have strict rules governing the collection, storage and extra-territorial transmission of individuals' personal data and impose serious penalties for non-compliance. In particular the European Union is highly protective of individual privacy rights.

## Instructions

How does Dartmouth determine if an individual should be classified as an employee or an independent contractor?

The classification of an individual as either an employee or an independent contractor requires a careful analysis of the relevant facts and circumstances and applicable laws. To reduce risk for Dartmouth, HR, Controller's Office and OGC have created an advisory team and a centralized process for determining the status of workers hired or contracted in countries outside of the United States. To facilitate this process, we have created an International Staffing Questionnaire to provide relevant information for determining the appropriate classification.

The [International Staffing Questionnaire](#) ("the questionnaire") should be completed to the best of your department's ability to help the advisory team determine the individual's status with Dartmouth and to clarify options for hiring/engagement. The form should be submitted to [Controllers.Office@dartmouth.edu](mailto:Controllers.Office@dartmouth.edu).

Once the questionnaire is submitted, the advisory team will work with the department to determine the appropriate classification and process for hiring or otherwise engaging an individual. Additional information may be requested, and other subject matter experts and external advisors may be consulted, as needed.

### **What happens next?**

The advisory team will advise you of available options and the appropriate process and timeline for hiring/engaging the individual. Depending on the location of the work, it may take time to engage consultants to identify the legal requirements. Requests for international staffing should be submitted as soon as possible after the staffing need is known.

### **How do we move forward with engaging individuals in a foreign country?**

If it is determined that the individual should be classified as an employee, and the department would like to hire the individual, Dartmouth will hire the individual based on the appropriate options for the circumstances.

Note that not all circumstances would support Dartmouth College directly employing individuals in foreign countries. Other options may include the following if certain criteria are met:

1. Utilizing a Dartmouth U.S. based employee with travel to foreign locations for limited periods of time;
2. Partnering with an established organization in the host country to perform the work or to employ staff on Dartmouth's behalf;
3. Engaging individuals as independent contractors; or
4. Contracting with in-country professional employer organizations (PEO).

Where circumstances require such alternative employment options, the Controller's Office in collaboration with HR and OGC, will provide an estimate of the associated costs to the department and assist with establishing the appropriate hiring process. Costs for initial legal, tax, and employment consulting to identify the requirements for a location will be covered by central funds, with Provost and Executive Vice President approval. The cost for establishing service required and all payroll, benefit, and related costs will be borne by the appropriate departmental or grant funds and should be included in the activity's budget.

### **How does Dartmouth setup an independent contractor?**

If the advisory team concludes that the resource should be classified as an independent contractor, the contractor must be established through Procurement processes for independent contractors and payments will be processed through Accounts Payable.

### **Additional Guidance/Contacts**

Regardless of the duration of the assignment or the number of individuals retained, work performed overseas can present a range of legal, financial, safety, and logistical considerations that create complications and add expense. Poor planning can result in immigration issues, tax penalties, and other avoidable costs. If you require additional guidance or have questions, please contact the following individuals.

General Information	<a href="#"><u>Controller's Office</u></a>
Hiring	<a href="#"><u>Cheryl Josler</u></a>
Financial	<a href="#"><u>Gail Goodness</u></a>
Tax	<a href="#"><u>Rachel Williamson</u></a>
Risk/Safety	<a href="#"><u>David Foster</u></a>
Legal	<a href="#"><u>Dana Scaduto</u></a>
Visa/Immigration	<a href="#"><u>Susan Ellison</u></a>
Independent Contractors	<a href="#"><u>Tammy L. Moffatt</u></a>