



# Guidelines For Individuals Providing Services While Physically Outside the United States

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# **Guidelines For Individuals Providing Services While Physically Outside the United States**

## **Guideline Purpose**

To establish clear criteria for departments, hiring managers, and supervisors for when individuals can provide services to WVU (West Virginia University) and/or WVU Research Corporation, collectively referred to as “WVU” or the “University” while located physically outside the United States.

## **Scope**

These guidelines apply to employees, prospective employees, vendors, and independent contractors (collectively “individuals”) who are located outside the United States and are providing or intend to provide services to WVU. These guidelines apply to individuals whether the service is provided as any class of employee or as an independent contractor/vendor. The guidelines apply regardless of the citizenship status of the individual providing the services.

These guidelines do not apply to incidental services performed by an employee while outside the United States (e.g., checking and responding to an e-mail while on vacation).

## **Application of Guidelines – Employment & Independent Contractor**

Under certain circumstances, individuals may not provide services to the University while located outside of the United States if the primary purpose for being outside of the country is for personal reasons. The primary purpose for being outside the United States will be considered for personal reasons if the individual is outside the United States for reasons unrelated to their provision of services to WVU, even if they are able to provide those services remotely while outside the country. Examples include *but are not limited to*:

1. Residing on a long-term or permanent basis in a country other than the United States.
2. Conducting all services in a country other than the United States in what would be considered a remote work environment regardless of if the services are as an employee or an independent contractor.
3. Being outside the United States for medical reasons including to have a procedure performed in another country.
4. Being outside the United States due to expired or expiring U.S. work authorization, or because a U.S. work authorization has not yet been issued; and/or
5. Being outside the United States to visit family located in another country.

The primary purpose for being outside the United States will be allowed for employment purposes and considered for WVU business reasons if the individual is outside the United States for reasons related to or required by their position with WVU. Examples include *but are not limited to*:

1. Visiting another country to conduct research (e.g., interviews with citizens of the United Kingdom as part of a research project).
2. Visiting another country to use research equipment and facilities (e.g., visiting the Large Hadron Collider in Switzerland); and
3. Visiting another country for a WVU-sponsored study abroad trip.

When an individual will be physically present outside the United States primarily for business reasons related to their job duties and/or their agreed upon duties/deliverables as per an Independent Contractor agreement with WVU, departments should follow the process outlined below.

### **Guidelines - Employment**

If an individual will be outside the United States for personal reasons and meets *any* one of the following conditions, they may not perform services for WVU as an employee while outside the country:

1. The individual, regardless of citizenship, will be performing services for WVU for more than 4 weeks while outside the United States.
2. The individual is a foreign national and their U.S. work authorization will expire while outside the United States.
3. The individual is a foreign national and they do not have a valid travel visa to re-enter the United States, even if they have a valid U.S. work authorization that will not expire while outside the country.
4. The individual does not have a U.S. Social Security number; or
5. The individual does not have a U.S. bank account.

Individuals performing services for the University in a country other than the United States will be allowed if the primary purpose is either a WVU business reason OR if the primary purpose is for personal reasons and none of the above conditions are met.

### **Guidelines – Independent Contractors**

In general, services provided by an individual as an independent contractor will not be permitted when the individual will be performing the agreed upon services outside the United States for personal reasons as outlined above. This applies whether the individual is a United States citizen or a citizen of a foreign country.

Consideration for exceptions will be given on a case-by-case basis following the following process:

1. The department should submit a completed Independent Contractor Determination Form to WVU Tax Services.
2. WVU Tax Services will review the request to determine if the services requested can be performed as an independent contractor or are employment in nature. This review will

be based on the nature of the services to be provided regardless of the country where the services are to be performed.

3. If it is determined by WVU Tax Services that the nature of the services to be provided are employment, then the individual will need to follow all required employment guidelines including, including but not limited to, those outlined above regarding business versus personal reasons for conducting services while outside the United States.
4. If it is determined by WVU Tax Services that the nature of the services to be provided can be performed as an independent contractor, then if the department wishes to pursue utilizing the individual as an independent contractor while located outside the United States, the department can at that time request consideration by General Counsel to allow the independent contractor outside of the United States by submitting the following information:
  - a. Country where independent contractor services will be provided.
  - b. Country of citizenship for the proposed independent contractor.
  - c. Justification why this specific individual is needed to perform the services as an independent contractor.
  - d. Justification why there are no individuals available within the United States who can complete the services needed.
  - e. Agreement by the department to cover all costs associated with obtaining outside legal counsel's review and consideration of the tax and business implications, along with the required tax reporting associated with the use of an independent contractor in a foreign country.

### **General Guidelines – Employment & Independent Contractor**

Individuals performing services for the University that are in a country other than the United States but are in an allowed situation should follow applicable University protocols regarding any approvals from required departments including but not limited to Information Security Services, Export Control, Tax Services, General Counsel, and WVU Global Affairs International Students & Scholars Services as appropriate. Departments should not permit the individual to perform services in any capacity outside the United States until the appropriate approvals have been received. If approval is not received or denied, services should not be performed in any capacity by the individual.

In situations where an individual is a WVU employee, and the situation would not be an allowed situation, the employee will be required to take annual and/or sick leave (as appropriate) to remain on the payroll and to continue receiving pay. In some circumstances, it may be appropriate for the employee to request an unpaid leave of absence for the period they will be outside of the United States. This will be determined on a case-by-case basis consistent with existing University policy.

Individuals performing services as an employee are not permitted to work in either a remote or hybrid position while residing on a permanent or semi-permanent basis in a country other than the United States.

Questions regarding these guidelines should be directed to Talent and Culture at [talentandculture@mail.wvu.edu](mailto:talentandculture@mail.wvu.edu).