

Decision Framework for Acquiring Human Resources

Department of Human Resources – Policy 14-001
Central Procurement Office – Operational Policy #2014-001
Department of Finance and Administration – Policy 31

Introduction and Background

1. Department management is responsible for making decisions about acquiring human resources for its business purposes and remaining within its existing budget. Managing human resource needs in departments involves many considerations: program need, budgetary resources, human resource policies, procurement policies and federal law. This policy provides a framework for the many decisions that should be considered, including how to reduce financial risks associated with acquiring human resources either through contracted labor or hiring employees. The policy addresses two specific risks: 1) incurring Internal Revenue Service (IRS) penalties, Patient Protection and Affordable Care Act (PPACA) non-compliance penalties and back-employee/employer-tax liabilities for treating contracted service providers as though they were employees, rather than independent contractors and 2) incurring PPACA penalties by working part-time or seasonal employees over those specific limits and not offering health insurance.

Applicability and Effective Date

2. This policy statement is issued jointly by:
 - The Department of Human Resources (DOHR) in accordance with TCA 8-30-104;
 - The Chief Procurement Office (CPO) in accordance with TCA 4-56-104 (f);
 - Department of Finance and Administration (F&A) in accordance with the authority granted under TCA 4-3-1007.

This policy will be effective immediately upon approval. These departments may develop and post to their websites additional procedures

or practice aides to assist agencies in the decision framework. Institutions of the University of Tennessee and the Tennessee Board of Regents are excluded from this policy statement.

General Rule

3. Department management is responsible for making decisions about acquiring human resources for its business purposes and remaining within its existing budget. Department management should manage its use of independent contract labor and part-time employees so that it mitigates risks associated with payment of insurance benefits or IRS penalties.
4. The IRS considers the State of Tennessee a single employer. IRS laws and regulations establish fines and penalties for failure to follow its mandates, including those associated with the PPACA. Therefore, each department should ensure its compliance so that the State, through a single department's action, does not incur extensive penalties and fines calculated either on that single department or on the total State employee population.
5. DOHR will provide support for department human resource management to monitor the acquisition of departmental human resources.

Considerations when acquiring contracted labor

6. The Department of General Services, Central Procurement Office (CPO) has contractual arrangements to assist departments in obtaining temporary or contracted labor. Utilizing the CPO contracts will sufficiently mitigate the risks associated with IRS and PPACA penalties.
7. When using independently contracted labor, department management should follow IRS guidelines to avoid treating independent contractors as though they are employees. IRS guidelines, if properly applied, will significantly reduce the risk of IRS fines and penalties associated with employer and employee back-taxes. Typically the IRS contacts F&A when questions about a worker's classification as an independent contractor arise, because F&A is responsible for the payment and reporting of employment taxes for all state employees. Generally, the IRS issue arises when an independent contractor has not made estimated income tax

payments. The IRS-associated fines and penalties are specific and limited to the department involved and will be paid from that department's existing budget.

Considerations when acquiring part-time or seasonal employees

8. Department management should properly classify employees as full-time, part-time or seasonal, depending on the facts and circumstances. Part-time resources should be worked no more than an average of 30 hours per week over the course of a calendar year ***across all departments of the State***. Seasonal employees should be worked no more than six months over the course of a calendar year ***across all departments of the State***. These limits are required by federal regulations for those circumstances when an employer is not required to provide health insurance under the PPACA. Upon request, DOHR can provide hiring managers with the work history and employee status across all State departments.
9. When properly applying the limits identified in #8 above, department management will significantly reduce the risk of associated IRS PPACA fines and penalties for not providing health insurance. Departments should monitor their classifications and use of part-time or seasonal employees to ensure the appropriate classification was chosen and is maintained.

Approvals:

We hereby approve this Policy Statement, "Decision Framework for Acquiring Human Resources" and authorize actions to effect its implementation.

Signed  Date 7/1/14
Larry B. Martin, Commissioner
Department of Finance and Administration

Signed  Date 7/2/14
Justin P. Wilson, Comptroller of the Treasury
Office of the Comptroller of the Treasury

Signed  Date 7/3/2014
Mike Perry, Chief Procurement Officer
Department of General Services

Signed  Date 7/2/14
Rebecca R. Hunter, Commissioner
Department of Human Resources