

Out-of-State Employment Policy and Process

Human Resources

Policy No.: HR. 01-33-102012
 Effective: 01/01/2012
 Supersedes: N/A

1.0 Purpose

This policy establishes hiring, administrative requirements, and supervisory responsibilities for employees who reside in states other than California, and are assigned San José State University (SJSU) Research Foundation work projects.

The SJSU Research Foundation (“Research Foundation”) currently employs a number of benefited and non-benefited employees whose primary work sites are located outside the state of California. The Research Foundation’s corporate central office is located in San José, California.

Administrative requirements necessary to adequately support and efficiently maintain an out-of-state workforce are significant. Each state has its own state and local employment, tax, insurance, legal, risk management, and other regulations. Recognizing ongoing and highly specialized employer responsibilities for an out-of-state workforce, and requirements to ensure compliance with locale-specific guidelines and regulations, the Research Foundation outsources the hiring and administrative management of out-of-state employees to a third party staffing agency whose main business is specifically modeled for this type of staffing arrangement.

2.0 Responsibility

The SJSU Research Foundation Human Resources Department (“Foundation HR”) is responsible for the implementation and maintenance of this policy. It is the responsibility of all Principal Investigators, Sponsored Programs Managers, Sponsored Programs Analysts, third party agencies, and out-of-state employees to understand and follow the guidelines and procedures detailed in this policy. **Exceptions to this policy require the approval of the Chief Operating Officer or her/his designee prior to recruitment of any out-of-state, transfer, or replacement employee.**

3.0 Definitions

The table below provides definitions for special terms, acronyms, and abbreviations used in this procedure.

Term, Acronym, or Abbreviation	Description
Principal Investigator (“PI”)	Authorized signer responsible for overall project management and direction of a grant or contract.

Agency or Staffing Agency	The third party staffing agency designated by the Research Foundation to hire and provide administrative management for employees who reside in a state other than California, and are assigned to work on Research Foundation projects.
Agency Employee	Individual who resides in a state other than California and is employed by a third party staffing agency to work on Research Foundation projects under the direction of the Principal Investigator. The Agency Employee is not a Research Foundation employee, but is subject to Research Foundation workplace policies.

4.0 Policy

Effective **January 1, 2012**, hiring and administrative management of all new out-of-state employees, as well as administrative management of current employees permanently transferring to worksites located in other states will be provided by the San José State University Research Foundation’s designated third party staffing agency (“the Agency”). Any employee operating within this arrangement is an employee of the designated third party staffing agency, and will be referred to as an “Agency Employee.”

Overall management responsibility for Research Foundation projects and project personnel remains with the Principal Investigator. To ensure compliance and scientific integrity, the Research Foundation’s Principal Investigator (“PI”) or designee assigns, directs, and supervises the work of out-of-state employees.

All terms and conditions of employment, including but not limited to payment processing, health, safety, welfare, and benefit plans (which may include health, dental, vision, Life, LTD, retirement, and workers’ compensation), are the sole and exclusive responsibility of the Agency to administer according to its policies. The Agency is responsible for entering into discussions and agreements for same with Agency Employees.

State and local taxes, employment taxes, and workers’ compensation provisions vary from state to state. Agency Employees and the Agency as their employer are subject to all employment-related laws of their designated work state. Employment of Agency Employees in states outside California may trigger additional compliance requirements besides those relating to employment. It is the responsibility of the Agency to ensure full compliance with all such requirements.

4.1 Scope

This policy applies to:

- Staffing and assignment of out-of-state workers hired on or after January 1, 2012 to perform work for the Research Foundation in locations outside the state of California.
- Employees seeking to transfer into or out of their currently assigned home state location on or after January 1, 2012.

Example: When a Research Foundation employee relocates to another state and wishes to continue to work on Research Foundation projects, the employee must terminate employment with the SJSU Research Foundation and enter into an employment relationship with the designated third party agency. **The employee then becomes an Agency Employee; the employee is no longer a Research Foundation employee.**

This policy does not apply to:

- Current out-of-state employees hired on or before December 31, 2011.
- SJSU faculty personnel.
- Independent Contractors, as they have no employment relationship with the Research Foundation.

4.2 Process

Pre-Award: If a Principal Investigator is seeking funding and anticipates the need to employ a worker in a state other than California, the PI shall first contact the Sponsored Programs Manager to discuss her/his intent to hire an out-of-state employee.

Post-Award: When a project has been funded and a PI determines that a worker who resides outside the state of California is required to perform project work, the PI shall first contact her/his Sponsored Programs Analyst to discuss the proposed recruitment. This discussion must occur prior to any recruitment of a prospective out-of-state employee.

1. At the outset, the Sponsored Programs Analyst ensures that the sponsoring project or contract guidelines and budget allow for such staffing. Specifically, the Analyst ascertains that the proposed staffing can be filled with an out-of-state employee pursuant to the terms of the sponsoring project or contract guidelines, and that the project or contract allows for same.
2. Once the budget has been approved, the PI completes a **Request to Hire Out-of-State Personnel** form, and forwards the completed form to Foundation HR.
3. The PI and Foundation HR then contact the designated agency to discuss specific details and requirements for the project including staffing, assignment, location, and rate of pay. They also review the Agency's timekeeping and payroll processes.
4. The Agency contacts the prospective candidate, if one has been identified, or discusses with the PI and Foundation HR potential staffing requirements, if needed. The Agency is then responsible for all "onboarding," administration, and processing pertaining to the Agency Employee.

Note: All onboarding and other required employment processing must be completed before the Agency Employee begins work on the assigned SJSU Research Foundation project.

5.0 Related Policy Information

5.1 Agency Employee Supervision

The PI is responsible for overall management of the project and its personnel. To ensure compliance and scientific integrity the PI assigns projects, and provides supervision and direction to Agency Employees on an ongoing basis.

5.2 Timekeeping, Time Reporting, Payment Processing

It is the responsibility of the Agency to provide clear and concise information regarding its policies and processes. A member of the Agency’s management team is to communicate the Agency’s timekeeping, time reporting, payment policies, and payroll processes to the PI, Foundation HR, and Agency Employees.

Using the online approval system provided by the Agency, the **Principal Investigator** or designee, reviews and approves the Agency Employee’s work hours. **Keeping in mind that Agency pay periods and Research Foundation pay periods may differ, the PI submits online approvals as required by the agency to ensure that the Agency Employee receives payment in a prompt and timely manner.**

Agency employees are responsible for accurately recording and reporting the hours they work during each pay period, using the online reporting tool provided by the agency. Failure to report hours worked as required by the agency may result in a delay in payment.

As the out-of-state employer, the agency processes and issues payments for work hours reported by the employee and approved by the **Principal Investigator**.

5.3 Agency Invoicing

The Agency invoices the Research Foundation for the Agency Employee’s actual hours worked/salary and other approved related costs.

6.0 Required Forms

This section contains a list of the forms and special tools referenced in this document.

Form	Description of Use
Request to Hire Out-of-State Personnel	Form used by the Principal Investigator to obtain formal approval for out-of-state employment staffing and/or hiring. The form is available online and in the Foundation HR office.
Online Time Reporting Tool	Electronic time reporting tool provided by the Agency to the PI and Agency Employees for recording, documenting, reporting, and approving work hours for each payroll period.
Agency Invoice	Document provided by the Agency to the Research Foundation to request payment for the Agency Employee’s reported hours worked/salary and other approved related costs.

7.0 References and Related Information

This section lists links, documents, and other information related to this policy.

Current Listing for Designated Third Party Staffing Agencies

8.0 Record Retention

All documents and records are maintained in accordance with Research Foundation *Record Retention* requirements. The table below describes retention dates.

Record	Retention
Out-of-State Employment Policy	This policy is effective until further revised or updated. Outdated or revised policies will be maintained in accordance with Research Foundation <i>Record Retention</i> requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements.
Request to Hire Out-of-State Personnel Form	This document is effective until further revised or updated. Outdated or revised documents will be maintained in accordance with Research Foundation <i>Record Retention</i> requirements. The Research Foundation will maintain the signed original and electronic copies of the approved document and all updates and replacements.

SJSU Research Foundation Policy Approvals:

Senior Director, Human Resources: Cheree Aguilar-Suarez **Date:** 10/15/2012

Senior Director, Office of Sponsored Programs: Jerri Carmo **Date:** 10/15/2012

Senior Director, Finance and Accounting: Paul Harris **Date:** 10/18/2012

Interim Chief Operating Officer: Jerri Carmo **Date:** 11/26/2012