

What is an Independent Contractor?

Independent contractors are independent business people who are hired to perform specific tasks. They are just like any other vendor, except they perform services rather than provide tangible goods. Independent contractors are in business for themselves. Individuals doing work on the side to earn extra money are not automatically classified as independent contractors.

Why businesses hire Independent Contractors?

Independent contractors are hired to accomplish a specific, one-time only task. Independent contractors normally specialize in a specific area and are usually only hired for a short period of time.

Many companies mis-classify employees as independent contractors to: limit eligibility for employee health, retirement, and profit sharing benefits; avoid union demand; reduce Social Security, unemployment taxes, workers compensation; and avoid government paperwork and requirements.

Why the big deal if someone is mis-classified?

The distinction between independent contractors and employees is often blurry, especially when the person works alone, without hired assistants. Many companies have used this "blurriness" to avoid taxes and have called their workers independent contractors. State and federal taxing authorities are now aggressively auditing companies to fine these abuses. When tax officials find mis-classified workers, the hiring firms are charged for all the workers' taxes and assessed huge penalties. The total taxes and penalties are sizably more than the hiring firm would have paid if it had treated the workers as employees.

Hiring firms also are sued by workers who believe that they were inappropriately called independent contractors. These lawsuits are filed when the worker needs unemployment, disability, or workers' compensation insurance. Many lawsuits occur because the worker never understood the consequences or responsibilities of being an independent contractor. Many individuals sue their hiring firm because they

are in trouble and they have nothing to lose. ***Hiring firms have the exclusive burden to prove to the government that their workers are really independent contractors.***

Basic Rules for hiring!

Employers use two basic rules when hiring employees or independent contractors. They are:

1. Government rules determine if a worker is an independent contractor, not written agreements.

IRS rules and California laws determine whether a worker is an independent contractor or an employee – not the written or oral agreements between you and the person you want to hire! A contract in a file is not proof of an independent contractor relationship.

To help employer's IRS has developed 20 Common Law Factors to be used in determining an individual's status. The State of California has added several additional factors to this list.

2. Workers are employees, unless a hiring firm can prove otherwise.

Judges and government auditors assume that most workers are employees, unless the hiring firm can prove otherwise.

Who Determines Status?

There are six governmental agencies that are involved with determining whether workers are independent contractors or employees:

- US Internal Revenue Service (IRS)
- CA Employment Development Dept. (EDD)
- CA Workers' Compensation Appeals Board
- Immigration and Naturalization Service (INS)
- US Department of Labor
- CA Labor Commissioner

Each case is determined separately. However, each of these agencies agree that true Independent Contractors

have two major characteristics:

1. The hiring firm has no right to control them. The right to control is important...not whether you actually exerted control.

If a hiring firm controls the means by which work is done, the worker is automatically an employee. If the hiring firm can exercise control only as to the results of the work, the worker is usually an Independent Contractor.

2. An Independent Contractor is an entrepreneur operating an ongoing business. Through their entrepreneurial skills, they should be able to earn a profit greater than an employee. They should also take corresponding entrepreneurial risks. They offer their services to the general public.

3. If an independent contractor is a non resident alien there are additional regulations that apply. Contact the Foundation Accounts Payable office for details.

What about CSUF Faculty & Staff?

IRS and the California Franchise Tax Board consider CSUF and the Foundation to be one tax location. Therefore, CSUF Faculty and Staff will not be considered independent contractors to the Foundation.

Before hiring CSUF personnel to perform additional work you should consult with the Foundation Human Resources and/or Payroll Office. Some of the unique situations that you could run into are:

- full-time CSUF staff must be paid overtime for Foundation employment
- part-time CSUF staff (PERS members) must also be PERS members for their Foundation pay

Each individual's case may be different.

The following is a summary of the common law factors used by the IRS to determine Independent Contractor/Employee Status. The

Foundation will make a determination of the individuals status based on answers to these questions. If the individual disagrees with the Foundation's determination, they may complete an IRS SS 8 for submission to the IRS.

IRS's 20 Common Law Factors

Factor 1. No Instructions. Contractors are not required to follow, nor are they furnished with instructions to accomplish a job. They can be provided job specifications by the hiring firm.

Factor 2. No training. Contractors typically do not receive training by the hiring firm.

Factor 3. Services don't have to be rendered personally. Contractors are hired to provide a result & have a right to hire others to do the actual work.

Factor 4. Work not essential to the hiring firm. A company's success or continuation should not depend on the service of outside contractors.

Factor 5. Own work hours. Contractors set their own work hours.

Factor 6. Not a continuing relationship. Usually contractors don't have a continuing relationship with a hiring company. The relationship can be frequent, but it must be at irregular intervals, on call, or whenever work is available. Warning: Part-time, seasonal, or short duration relationships have nothing to do with independent contractor status.

Factor 7. Control their own assistants. Contractors shouldn't hire, supervise, or pay assistants at the direction of the hiring company. If assistants are hired, it should be at the contractor's sole discretion.

Factor 8. Time to pursue other work. Contractors should have enough time available to pursue other gainful work.

Factor 9. Job Location. Contractors control where they work. If they work on the premises of the hiring company, it is not under that company's direction or supervision.

Factor 10. Order of work set. Contractors determine the order and sequence that they will perform their work.

Factor 11. No interim reports. Contractors are hired for the final result.

Factor 12. Payment timing. Contractors are paid by the job, not by time. Payment can be for percentage of job complete.

Factor 13. Working for multiple firms. Contractors work for more than one firm at a time.

Factor 14. Business expenses. Contractors are generally responsible for their incidental expenses.

Factor 15. Own tools. Contractors furnish their own tools.

Factor 16. Significant Investment. Contractors should be able to perform services without the hiring company's facilities.

Factor 17. Services available to general public. Contractors make services available to general public by; having an office, business signs, business license, listing their services in a business directory, advertising, etc.

Factor 18. Possible profit or loss. Contractors can suffer a profit or loss on each job. Employees can't suffer a loss.

Factor 19. Limited right to discharge. Contractors can't be fired so long as they produce a result which meets the contract specifications.

Factor 20. No compensation for non-completion. Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to compete.

Independent Contractors

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