

## WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT EMPLOYMENT DETERMINATION GUIDE

CONTRACTOR NAME: \_\_\_\_\_ SOCIAL SECURITY/TAXPAYER ID# \_\_\_\_\_

***All staff members recommending the employment of an independent contract consultant are responsible for completing the "Questionnaire for Hiring Independent Contractors"***

**\*\* CORPORATIONS ARE NOT REQUIRED TO COMPLETE THIS FORM \*\***

### PART I

1. Has this category of worker been classified as an "employee" by the IRS? Yes No
- The IRS has determined that the following types of workers are employees of the West Contra Costa Unified School District:
- |  |                        |
|--|------------------------|
| Administrator                                | Cafeteria Worker       |
| Examination Monitor                          | Proctor                |
| Teacher/Instructor                           | Sub Teacher/Instructor |
| Clerical Staff                               | Psychologist           |
| Individual "filling in" on interim basis     | Nurse                  |
| Licensed Clinical Social Worker              | Counselor              |
| Specialty Teacher (art, poetry, music, etc.) | Librarian              |
| SAT Prep class Teacher                       | School Bus Driver      |
| Categorical program Coordinator              | Tutor                  |
| Attendance/Outreach Consultant               |                        |
2. Is the individual an employee of the District in another capacity? Yes No
3. Has the individual performed substantially the same services for the District as an employee in the past? Yes No
4. Are there currently employees of the District doing substantially the same work as will be required of the individual you are hiring? Yes No

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If the answer to any of the above questions is **YES**

**STOP HERE**  
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Do not complete the rest of the questions. The individual is an employee of the District and must be paid and reported accordingly.

If all of the above answers are **NO**, continue to **PART II**.

# WORKSHEET ON EMPLOYMENT STATUS

## PART II

**Questions 1 – 3** are significant questions. If the answer to any of them is "Yes," it is a strong indication that the worker is an employee.

1. Do you instruct or supervise the person while he or she is working? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors are free to do jobs in their own way, using specific methods they choose. A person or firm engages an independent contractor for the job's end result. When a worker is required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the worker quit or be discharged (fired) at any time? Yes \_\_\_\_\_ No \_\_\_\_\_

If you have the right to fire the worker at will and without cause, it indicates that you have the right to control the worker.

Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms of the contract. They are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires a licensed painter to paint the store, and the work had started, the store owner would not be able to just terminate the painter without there being a good reason or just cause for doing so.

3. Is the work being performed part of your regular business? Yes \_\_\_\_\_ No \_\_\_\_\_

Work which is a necessary part of the regular trade or business is normally done by employees. For example, a sales clerk is selling shoes in a shoe store. A shoe store owner could not operate without sales clerks to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a onetime or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

A "No" answer to **questions 4 – 6** indicates that the individual is not in a business for himself or herself and would, therefore, normally be an employee.

4. Does the worker have a separately established business?

Yes \_\_\_\_\_ No \_\_\_\_\_

When individuals hold themselves out to the general public as available to perform services similar to those performed for you, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their employees without your knowledge or consent. Independent contractors can normally advertise their services in newspapers and/or publications, the Internet, yellow page listings, radio, television, and/or seek new customers through the use of business cards.

5. Is the worker free to make business decisions which affect his or her ability to profit from the work?

Yes \_\_\_\_\_ No \_\_\_\_\_

An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer a loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposition of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and selection of the types and amounts of insurance coverage for the business.

6. Does the individual have a substantial investment in their job which would subject him or her to a financial risk of loss?

Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks. To the extent necessary for the specific type of business, independent contractors provide their own business facility.

**Questions 7 – 13** are additional factors that should be considered. A "Yes" answer to any of the questions is an indication the worker may be an employee, but no one factor by itself is deciding. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed. However, the greater the number of "Yes" answers to questions 7 – 13, the greater the likelihood the worker is performing services as an employee.

7. Do you have employees who do the same type of work?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the work being done is basically the same as work that is normally done by your employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, a worker is hired to fill in on a temporary basis. This worker is a temporary employee, not an independent contractor.

(Note: If you contract with a temporary agency to provide you with a worker, the worker is normally an employee but may be an employee of the temporary agency. You may refer to the EDD *Information Sheet: Temporary Services and Employee Leasing Industries* [\[DE 231F\]](#) on the subject of temporary service and leasing employers.)

8. Do you furnish the tools, equipment, or supplies used to perform the work?

Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks.

9. Is the work considered unskilled or semi-skilled labor?

Yes \_\_\_\_\_ No \_\_\_\_\_

The courts and the California Unemployment Insurance Appeals Board have held that workers who are considered unskilled or semi-skilled are the type of workers the law is meant to protect and are generally employees.

10. Do you provide training for the worker?

Yes \_\_\_\_\_ No \_\_\_\_\_

In skilled or semi-skilled work, independent contractors usually do not need training. If training is required to do the task, it is an indication that the worker is an employee.

11. Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis?

Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors agree to do a job and bill for the service performed. Typically, payments to independent contractors for labor or services are made upon the completion of the project or completion of the performance of specific portions of the project.

12. Did the worker previously perform the same or similar services for you as an employee?

If the worker previously performed the same or similar services for you as an employee, it is an indication that the individual is still an employee. Yes \_\_\_\_\_ No \_\_\_\_\_

13. Does the worker believe that he or she is an employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

Although belief of the parties is not controlling, intent of the parties is a factor to consider when making an employment or independent contractor determination. When both the worker and principal believe the worker is an independent contractor, an argument exists to support an independent contractor relationship between the parties.

FOR DISTRICT USE ONLY	
<b>PREPARERS CERTIFICATION</b>	<b>REVIEWED AND APPROVED</b>
I certify that the answers to the above questions accurately reflect the anticipated working relationship.	
_____ Prepared by District Originator	_____ Business Office Signature
_____ Date	_____ Date