

Employee / Independent Contractor Worksheet

In California, a worker is presumptively an employee unless the employer demonstrates otherwise. Due to recent changes in California law, a new test was established to determine whether a worker may be classified as an independent contractor. This worksheet asks questions and seeks evidence supporting responses to the questions to help determine whether a service provider should be classified as an employee or an independent contractor. Please submit this completed form to the Business Office at independentcontractor@oxy.edu. The Business Office will work with you to make the determination as to (1) whether the services may be performed by existing Occidental personnel within the scope of their employment, (2) whether a contractor relationship exists and, if not, (3) whether the individual needs to be hired by the college as an employee to perform the work. If you have questions, please call Lupe Salmeron at (323) 259-1423 or Barbara Valiente at (323) 259-1417.

For the following categories of work—and where the proposed independent contractor is not otherwise a College employee and is not subject to the College's supervision or control in the performance of work—the hiring department does not need to complete this Employee / Independent Contractor Worksheet. You may simply submit a proposed contract and invoice for these services to the Business Office for approval and payment:

- ” Guest speaker or lecturer, when providing services during a period of 1 week or less
 - | Note: This does not include those speakers who are receiving an honorarium

***Borello* / “Economic Realities” Test**

The following situations are generally exempt from the ABC Test, and the *Borello* test will apply, as described below.

” **Professional Services Contracts**, including:

| Services for marketing, human resource administration, graphic design, grant writing, and fine art;

| Services provided by a photographer, photojournalist, videographer, photo editor, digital content aggregator, freelance writer, translator, editor, copy editor, or illustrator (unless the worker primarily works at Oxy or is directly replacing an existing employee);

| Services provided by a content contributor, advisor, producer, narrator, or cartographer for a journal, book, periodical, evaluation, other publication or educational, academic, or instructional work in any format or media (with certain restrictions); and

| Services provided by a licensed real estate appraiser

” **Business-to-business contracting relationships**, where the business service provider is formally registered as a business entity (e.g. corporation, LLC, sole proprietorship) and is not an individual, *and* where the provider is free from the control/direction of Oxy, provides services directly to Oxy, maintains a separate business location, can negotiate its own rates, and sets its own hours and location, among other things.

” **Services for the creation, marketing, promotion, or distribution of sound recordings or musical compositions**, including for the services of: recording artists, songwriters, lyricists, composers, musical engineers, musicians, etc.

” **Services Provided by Certain Types of Professionals:**

| Musicians or musical groups engaged for a single-engagement live performance event;

| Individual performance artists;

| Insurance brokers, securities broker-dealers, and investment advisers;

| Licensed professionals, including lawyers, physicians, architects, landscape

” Is the work usually unsupervised or done under the College’s direction?

Yes

No

” Does the service provider have the opportunity for profit or loss depending on their managerial skill?

Yes

No

” What is the length of time for which the services are to be performed?

” What is the degree of permanence of the working relationship?

” Is the method of payment by time or by job?

” Does the service provider hire their own employees?

” Does the College have the right to fire at will?

Under this multifactor test, no single factor controls the determination, and the relationship instead depends on the “circumstances of the whole activity.”

ABC Test

Is the person free from the control and direction of the College in connection with the performance of the work, both under the contract for the performance of the work and in fact?

Yes

No

Does the person perform work that is outside the usual course of the College's business?

Yes

No

Is the person customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?

Yes

No

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