

SECTION 7 - ENGAGEMENT OF INDEPENDENT CONTRACTORS

Policy Sequence 7-000

Background and Definitions

Occasionally there will be need for short-term professional services that cannot be performed by existing employees. The use of an independent contractor may satisfy this need in some qualified situations. Although the classification of independent contractor is not clearly defined by federal or state taxing agencies (i.e. the Internal Revenue Service [IRS] and the Employment Development Department [EDD] respectively) we have set forth the following guidelines to aid in the appropriate use of independent contractors.

Independent Contractor - An independent contractor is an individual or organization, not affiliated with the University or Foundation, providing primarily professional or technical advice or services under a written agreement or engagement letter.

Employee - An employment relationship exists when the employer (Foundation) has the right (whether or not it exercises that right) to supervise and control the manner of performance as well as the results of the service by the individual (employee). When such a relationship exists, the formal employment process must be followed.

Independent contractors are in business for themselves and receive a fixed amount for services rendered. The Foundation is not required to withhold federal or state taxes, unemployment, social security, worker's compensation, or disability insurance benefits from their payments. It is very important that individuals who should be hired as employees not be set-up as independent contractors due to the potentially severe financial consequences facing the employer (Foundation). Both the IRS and the EDD have the legal authority to audit an employer's records to check for such misclassifications. When individuals are found to be misclassified as independent contractors, either agency will not only collect the applicable taxes that should have been withheld, but may also impose penalties on the employer (Foundation).

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The following statements outline the CSULB Foundation policy for the use of independent contractors:

- § The services of an independent contractor may only be secured when a determination has been made by the Foundation Human Resources Department that the services to be performed and the individual performing the services meet the guidelines set forth in this policy and when the appropriate Foundation Independent Contractor Agreement form has been approved by the Foundation Human Resources Department;
- § The use of independent contractor services is expected to be temporary and infrequent;
- § The services of an independent contractor shall not be used to carry out a major portion of a program. Individuals responsible for directing a program or participating extensively in the administration of a program must follow the formal employment process; § The services of an independent contractor shall not entitle the independent contractor to a standing other than "independent contractor" in any published report or document;
- § Independent contractor services entered into pursuant to sponsored contracts or grants shall conform to all provisions of the applicable contract or grant, both with respect to the propriety of the independent contractor relationship and to the terms of the relationship;
- § An independent contractor engaged by the Foundation shall not hire any employee of the University or Foundation to perform any services covered by the engagement.

In addition, the Foundation Human Resources Department will utilize the following twenty common law factors in determining the appropriateness of an independent contractor classification:

- Factor 1** **No Instructions** - Independent Contractors are not required to follow, nor are they furnished with, instructions to accomplish the job.
- Factor 2** **No Training** - Independent Contractors do not receive training by the Foundation. They use their own methods to accomplish the work.
- Factor 3** **Services don't have to be rendered personally** - Independent Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
- Factor 4** **Work not essential to department or program** - The success of the department or program should not depend on the services of independent contractors. An example in violation of this factor would be hiring a Project Director as an independent contractor.
- Factor 5** **Own work hours** - Independent contractors set their own work hours.
- Factor 6** **Not a continuing relationship** - Independent contractors normally do not have a continuing relationship with the Foundation.
- Factor 7** **Control their own assistants** - Independent contractors should not hire, supervise, or pay assistants at the direction of the department or program administrator. If assistants are hired, it should be at the independent contractor's sole discretion.
- Factor 8** **Time to pursue other work** - Independent contractors should have enough time available to pursue other gainful work.
- Factor 9** **Job Location** - Independent contractors control where they work. If they work on the CSULB campus or in any Foundation facility, it should not be under the direction of a CSULB or Foundation representative.
- Factor 10** **Order of work set** - Independent contractors determine the order and sequence in which they will perform their work.
- Factor 11** **No interim reports** - Independent contractors are hired for a final result and, therefore, should not be asked for progress or interim reports.
- Factor 12** **Payment Timing** - Independent contractors are paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of job completed. Payment can be based on the number of hours needed to do the job times a fixed hourly rate. However, this should be determined before the job commences.
- Factor 13** **Working for multiple firms** - Independent contractors often work for more than one firm at a time.
- Factor 14** **Business expenses** - Independent contractors are generally responsible for their incidental expenses.
- Factor 15** **Own tools** - Independent contractors normally furnish their own tools.
- Factor 16** **Significant investment** - Independent contractors should be able to perform

their services without CSULB or Foundation facilities (equipment, office furniture, machinery, etc). The independent contractor's investment in his trade must be real, essential, and adequate.

Factor 17 **Services available to the general public** - Independent contractors make their services available to the general public by one or more of the following:

- § Having an office and assistants;
- § Having business signs;
- § Having a business license;
- § Listing their services in a business directory and advertising their services.

Factor 18 **Possible profit or loss** - Independent contractors should be able to make a profit or loss. Employees can't suffer a loss. Five circumstances show that a profit or loss is possible:

- § If the independent contractor hires, directs, and pays assistants;
- § If the independent contractor has his/her own office, equipment, materials, or facilities;
- § If the independent contractor has continuing and recurring liabilities;
- § If the independent contractor has agreed to perform specific jobs for prices agreed upon in advance;
- § If the independent contractor's services affect his/her own business reputation.

Factor 19 **Limited right to discharge** - Independent contractors can't be fired as long as they produce a result which meets the contract specifications.

Factor 20 **No compensation for non-completion** - Independent contractors are responsible for the satisfactory completion of a job. If the job is not completed, they may be legally obligated to compensate the Foundation for failure to complete.

Procedure

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Setup:

Requests for the use of Independent Contractor services should be forwarded to the Foundation Human Resources Department at least two weeks prior to the commencement of said services. It is essential that the Independent Contractor Agreement (see Appendix A) is filled out in its entirety. In Section 4.01 of the Agreement, the description of services must be very explicit and inclusive of all services expected of the Independent Contractor. If the entire description will not fit in the space provided, a separate description may be attached clearly marked SCHEDULE A at the top. In that instance the phrase "refer to Schedule A" must be noted in Section 4.01. No commitment for the engagement or payment of services will be binding upon the Foundation without approval by the Foundation Human Resources Department. Once the service request receives approval by the Foundation Human Resources Department, the independent contractor may begin to perform services.

Payment:

Payments may be made to the independent contractor on a monthly basis or in one lump-sum payment. The department or project must submit a Personal Services form (see Appendix B) to initiate a payment. Payments may not be made in advance.

Appendix A
Independent Contractor Agreement

Appendix B
Personal Services Form