

## BEFORE YOU BEGIN COMPLETING THE PERSONAL SERVICE REQUISITION CHECKLIST FOR DETERMINATION OF WORKER STATUS, PLEASE READ THE FOLLOWING

**PURPOSE:** The Checklist for Determination of Worker Status is completed to ensure that all personal service contracts comply with local, state, and federal labor/tax laws.

Generally, employment occurs when an employer engages the services of an employee for pay. An "employer" can be any employing unit, such as a sole proprietor, joint venture, partnership, limited liability company, or corporation. An "employer" can also include associations, trusts, charitable foundations, non-profit organizations, public entities, and other organizations. An individual is determined to be an "employee" under common law rules or by application of specific statutes.

### **DEFINITION OF EMPLOYEE:**

An "employee" includes all of the following:

- Any officer of a corporation.
- Any worker who is an employee under the usual common law rules.
- Any worker whose services are specifically covered by statutes.

An employee may perform services on a less than full-time or permanent basis. The law does not exclude services from employment that are commonly referred to as day labor, part-time help, casual labor, temporary help, probationary, or outside labor.

### **DEFINITION OF COMMON LAW EMPLOYEE:**

A common law employee is an individual who is hired by an employer to perform services and the employer has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship.

### **DEFINITION OF INDEPENDENT CONTRACTOR:**

Independent contractors are not employees. They are engaged in separately established bona fide businesses. A bona fide business is subject to profit or loss. They are usually contracted to perform specific tasks, and they have the right to control the way the work is to be accomplished. They have a substantial investment in the business and perform services for more than one business. Generally speaking, they are anyone who is not an employee under the common law rules, unless they are statutory employees.

**NOTE:** If a worker is an employee, then the employer is obliged to collect and remit all employment taxes. However, if a worker is an independent contractor, then the employer does not have to collect employment taxes and the worker is responsible for self-reporting and self-remitting the employment taxes to the IRS.

### **CAN A FORMER COUNTY EMPLOYEE BE THE VENDOR?**

If the former employee has been gone for over one (1) year from the date of the request, then he/she can be the vendor. Otherwise, you will need Board of Supervisor approval in order to contract with the former employee.

### **CAN THIS JOB BE PERFORMED BY EXTRA HELP, CORESTAFF, OR INTERMITTENT HELP?**

If so, then that route should be taken.

If not sure, **STOP** and ask your department HR Representative.

**Personal Service Requisition**  
**Checklist for Determination of Worker Status**

**PURPOSE:** The Checklist for Determination of Worker Status is completed to ensure that all personal service contracts comply with local, state, and federal labor/tax laws.

**Instructions:** This form should be completed by the manager requesting personal services from an individual vendor **BEFORE** a purchase requisition is initiated. A separate form should be completed for each individual vendor for determination of employment status. For the purpose of this checklist, the vendor of the personal service is referred to as the "worker." If you feel that your vendor serves in an "independent contractor" capacity with the County, complete and return this form to your assigned agency/department HR Representative. This form will be forwarded to CEO-HR Analyst office and then to GSA Procurement upon compliance with IRS's criteria for independent contractor status.

<b>Agency/Department Name</b> (Please type or print clearly)	<b>Vendor Name &amp; Address</b> (Please type or print clearly)	<b>Date</b>
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**Describe the services to be performed by the worker.** (Please type or print clearly)

	Yes	No
<b>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 and you have a high probability of risk if you classify the worker as an independent contractor.</b>		
<b>1. Do you instruct or supervise the person while he/she is working?</b> (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 the County's procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.)		
<b>2. Can the worker quit or be discharged (fired) at any time?</b> (If you have the right to fire the worker without notice, 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 an attorney to review his or her lease, the attorney would get paid only after satisfactory completion of the job.)		
<b>3. Is the work being performed part of your regular business?</b> (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 one-time 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.)		
<b>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.</b>		
<b>4. Does the worker have a separately established business?</b> (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, yellow page listings, and/or seek new customers through the use of business cards.)		

	Yes	No
<p>5. Is the worker free to make business decisions which affect his/her ability to profit from the work? (An individual is normally an independent contractor when he/she is free to make business decisions which impact his/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/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.)</p>		
<p>6. Does the individual have a substantial investment which would subject him/her to a financial risk of loss? (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.)</p>		
<p><b>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. All factors must be considered and weighed together to determine which type of relationship exists. However, the greater the number of “Yes” answers to questions 7 – 13 the greater the likelihood the worker is performing services as an employee.</b></p>		
<p>7. Do you have employees who do the same type of work? (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.)</p>		
<p>8. Do you furnish the tools, equipment, or supplies used to perform the work? (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.)</p>		
<p>9. Is the work considered unskilled or semi-skilled labor? (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.)</p>		
<p>10. Do you provide training for the worker? (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.)</p>		
<p>11. Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis? (Independent contractors agree to do a job and bill for the service performed. 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.)</p>		
<p>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.)</p>		
<p>13. Does the worker believe that he/she is an employee? (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.)</p>		

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Requesting Manager Signature                      Date

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Agency HR Representative Signature                      Date

\_\_\_\_\_  
CEO Human Resources Signature                      Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**NEED HELP? Contact your Agency HR Representative**