INDEPENDENT CONTRACTOR vs. EMPLOYEE

When you hire individuals to perform services for the College, they are either independent contractors or employees. Understanding the difference is crucial when it comes to record keeping and tax reporting. Making the determination can be a frustrating experience because the answer is not always clear. Making the appropriate analysis, however, is critical as it is not always safe to rely on an "industry standard" or "custom" that automatically treats certain kinds of workers as independent contractors. To add to the confusion, the California test and the federal test to determine whether a worker is an employee or an independent contractor differ in some cases. Consequently, all requests for payment of services must be submitted with a completed worksheet on worker status. Check requests submitted without this documentation will be returned for completion, thus, delaying payment to the individual or group involved.

Also, when you hire an independent contractor who will be using his or her employees to perform the services or job required, verify that the contractor has workers compensation coverage for the contractor's employees. In addition, when hiring independent contractors, review carefully the contractor's qualifications and experience as the College may incur liability for physical harm to persons not employed by the College or the contractor, caused by the College's failure to hire a competent and careful contractor to do inherently dangerous work.

If you have any questions after completing this worksheet, please contact Daphne Plys (x4211) in the Business Office or Ann Kelly (x4212) in Human Resources.

cc: Payroll Manager
    Director of Employee Benefits
WORKSHEET ON WORKER STATUS

I. California Test for Employment

To determine if an worker is an independent contractor or an employee, look at the Main Test and, then, when required, the ten Secondary Factors.

A. Main Test

Does the College (do you) have the right to direct and control the manner in and means by which the worker carries out the duties assigned or job required. Yes ___ No ___

The right of direction and control, whether or not exercised, is the most important factor in determining an employment relationship. The right to discharge a worker at will and without cause is a strong indication of the right of direction and control. Note: When it is not clear (which is often the case) whether you have the right to direct and control the worker, you must look further into the actual working relationship between the worker and the College by considering the following ten (10) Secondary Factors.

B. Secondary Factors

Depending on the type of working relationship and the services performed, each factor can vary in its importance to the final determination of status. Consider each factor independently; then, consider them as a whole in making your determination.

1. Is the worker engaged in a distinct trade or occupation? Yes ___ No ___
   
   a. Does the worker make their services available to the general public? Yes ___ No ___
   
   b. Does the worker perform work for more than one entity/company at a time? Yes ___ No ___
   
   c. Does the worker hire, supervise, or pay assistants? Yes ___ No ___
   
   d. Does the worker have a substantial investment in his or her own equipment and facilities? Yes ___ No ___

2. Is the work done without supervision? Yes ___ No ___

   In the geographic area and in the occupation involved, is the type of work usually done under the direction of a College employee without supervision? Yes ___ No ___
3. Is the work highly skilled and specialized?  
   Yes ___ No ___
   a. Does the College train the worker?  
      Yes ___ No ___
   b. Does the worker personally perform the services?  
      Yes ___ No ___

4. Does the College furnish/provide the tools, equipment,  
   materials, supplies, and place of work?  
   Yes ___ No ___
   Does the worker perform the services on the  
   College's business premises?  
   Yes ___ No ___

5. Are the services provided on a long-term or  
   repetitive basis?  
   Yes ___ No ___

6. Method of payment: Is the worker paid based on  
   time worked (hourly, weekly basis) or upon  
   completion of a specific project?  
   Yes ___ No ___

7. Are the services an integral part of the College's  
   business?  
   Yes ___ No ___

8. What type of relationship do the parties believe  
   they are creating?  
   Employee ___ Independent Contractor ___

9. What is the extent of actual control by the College?  
   a. Does the worker have the right to terminate the  
      relationship without liability?  
      Yes ___ No ___
   b. Does the College provide instructions on how to  
      do the work?  
      Yes ___ No ___
   c. Does the College establish the work hours or  
      the number of hours to be worked?  
      Yes ___ No ___
   d. Does the College require the work to  
      be done in a particular order or sequence?  
      Yes ___ No ___
   e. Does the College require oral or written  
      reports from the worker?  
      Yes ___ No ___

10. Is the work performed for the benefit  
    of the College's business?  
    Yes ___ No ___
II. **Federal Test for Employment**

To determine if an worker is an independent contractor or an employee, consider the behavioral control, financial control, and relationship of the parties:

**Behavioral Control:** Generally, anyone who performs services for you is your employee if you have the right to control what will be done and how it will be done.

**Financial Control:** Who directs or controls the business aspects of work? Independent contractors are in business for themselves, offer their services to the general public, and have a significant financial investment in the facilities or equipment used in performing services. They can realize a profit or incur a loss.

**Relationship of the Parties:** How do you and the worker perceive your relationship? An ongoing relationship and worker benefits (e.g. health insurance) generally indicate an employer-employee relationship. However, the actual substance of the relationship determines whether your workers are employees or independent contractors, not a job title or written contract.