



CLASSIFICATION WORKSHEET ON WORKER STATUS

Under California law, anyone hired to perform work for, or to provide a service to, the College is presumptively an employee (Cal Labor Code 2775(b)(1)). However, this presumption can be overcome if the person hired qualifies for independent contractor status. The primary test for determining such status is set forth in the California Labor Code, but it is commonly referred to as the "Dynamex Holding/Test" or the "ABC Test."

The purpose of this worksheet is to determine if a worker qualifies to be classified as an independent contractor. If the worker cannot be qualified as an independent contractor, then the department desiring to contract with/hire this individual will need to work with Human Resources to hire the worker as an employee. **All final decisions about whether a worker is hired as an independent contract shall be made by the Business Office.**

Name of worker/contractor:

Name of Business (If different from above) and Business Address:

Nature of work being performed/Description of Services to be provided:

SMC Relationship Test:

Consistent with applicable law, the College has identified elements of the relationship that will automatically negate the qualification of Independent contractor status. If the answer is "Yes" to any question in this section, the worker is classified as an employee, and cannot be classified as an independent contractor.

Relationship with the College

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| 1. Is the individual on record as a current employee? | Yes | No |
| If no, is it expected that the College will hire this individual as an employee following the termination of this service? | Yes | No |
| 2. Was the individual a College employee any time during the last year and did he or she provide the same or similar services while an employee? | Yes | No |
| 3. Is the individual an enrolled student at Saint Mary's College? | Yes | No |
| 4. Will the worker be responsible for learning outcomes of students enrolled at the College, such as issuing grades? | Yes | No |

If the answer to ALL of the above questions is NO, then we can determine if a worker qualifies as an independent contractor, by reviewing the behavioral control, financial control and relationship of the parties using the ABC test.



ABC Test:

- A. **Behavioral Control:** 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 performance of the work and in fact? Yes No

Example of how you might think about answering behavioral control:

Will the worker perform the services at its own place of business? Will the worker be free from the supervision of the College while engaged in the project? Will the worker determine how to do the work without instruction from the College? Is the worker free to perform the work following its own process and simply be responsible to provide the College with a particular deliverable according to the project timeline/schedule? Will the worker establish its own work hours or schedule? Your consideration of this question should not be limited to these example questions. You are assessing whether the College is directing and controlling the work or if the worker is in fact acting independent in the conduct of its work.

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

Does the worker perform work that is outside the usual course of the College's business? Yes No

Example of how you might think about answering relationship of parties:

Are the services unusual or outside the College's regular activities (as opposed to services that form an integral part of the College's regular business)? Is the work dissimilar from the services and work provided by regular College employees?

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

Is the person customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work being performed for the College? Yes No

Example of how you might think about answering Financial Control:

Can the College prove the person's independent business operation is actually in existence at the time the work is performed for the College? (Is there a website or other documentation) Has this person taken steps that are usually taken when going into business in order to establish and promote the existence of such business? Does the worker control the method and amount of compensation to be paid for the services, and does the worker have the opportunity for realizing a profit or loss from the contract? Does the person make their services available to the general public or a number of potential customers and is the person doing so at the same time that services are also being provided to the College?

All three questions need to be answered yes in order for the worker to qualify as an Independent Contractor. A copy of this completed checklist, with the approval of the Business Office, should accompany the contract and CAR form.

If any of the questions are answered no, then the worker must be treated as an Employee unless an exception applies. The California Labor Code provides for certain exceptions to the use of the ABC Test. Those exceptions are set forth in the Labor Code and are assessed for independent contractor status under an alternate test, commonly referred to as the "Borello Test."



(Cal Labor Code 2776 et. Seq.) **You will need to contact the Controller or the Accounting Manager for further review of a possible exception that would apply.**

Department Authorization Signature

By signing above, I certify that I understand an independent contractor must be free from control, and perform their work outside of the usual course of the College's activities, and is someone who is customarily engaged in an independently established trade or business. I have reviewed the above questions, I have made diligent inquiry, I have responded to this checklist accurately and to the best of my knowledge and believe the determination is accurate.

Prepared By _____

Date _____

Consulted with Finance- confirmation of determination to be provided by Controller, Accounting Manager, or Director of Payroll and Tax Compliance.

Confirmation initials _____