

Independent Contractor Policy

Purpose

Departments often require the services of individuals who are not employees of Foundation or the University (CSUDH), which include the services of an individual consultant, guest lecturer, guest speaker, entertainer, or art model and other. In the event the consultant, guest speaker, entertainer, art models and others will be provided a gift/honorarium payment instead of a direct payment, see Honorarium in the Hospitality Policy for additional guidance. When contracting with individuals as consultants/independent contractors, the designation of independent contractor status is governed by the Internal Revenue Service (IRS) tax code and the State of California. It is important to correctly classify independent contractors vs. employees to ensure appropriate compensation and compliance with all tax and legal obligations.

Significant legal and tax penalties exist for incorrect classification of an employee as an independent contractor. In addition, incorrectly contracting with independent contractors may expose Foundation and the University to significant risk. Employees of the CSU system or any affiliated auxiliary enterprise, may not be classified as an Independent Contractor or paid through the accounts payable process due to additional employment rules enforced by the Chancellor's office. Payment to individuals who are employed by the CSU system or affiliated auxiliary enterprises must be hired and paid through Foundation payroll.

Independent Contractor Definition

Independent Contractor is an individual (one person) who assigned specific tasks in an organization that has a set completion date and can work independently on the deliverable free from the control of the employer. To be classified as an independent contractor, an employer/employee relations cannot exist. Therefore, a Foundation employee or any employee of the CSU system are not eligible to be classified as an independent contractor. An independent contractor may have a standard social security number (SS#) or a company tax identification number (TIN). If services are being provided by a company or group of individuals with whom provide consulting services, they may not be classified as independent contractors by definition. See the Contract Agreements Guide for more information.

Dynamex Testing

To further ensure employers classify independent contractors correctly California Supreme Court's adoption of a single test for determining whether a person is an employee or independent contractor (See Dynamex Operations West, Inc. v. Superior Court decision). The test, which is now referenced as the "Dynamex Test," requires significant changes to how CSUDH Foundation determines the employment relationship.

In light of the Dynamex Test, before services are performed, CSUDH Foundation must assess the relationship between the individual and the campus to ensure that the individual is properly classified. Misclassification of a worker as an independent contractor can result in serious wage and benefit obligations, financial penalties, tax consequences, and other liabilities.

Dynamex Testing Continued

The court ruled that establishing such a classification can be best determined by the “ABC Test” as set forth below:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract and in the actual performance of the work.
- B. The worker performs work that is outside the usual course of the hiring entity’s business.
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

ALL THREE ABC TEST CRITERIA MUST BE MET TO BE PAID AS AN INDEPENDENT CONTRACTOR. Otherwise, the worker must be hired as an employee per the State of California Supreme Court *Dynamex Operations West* decision regardless of if the IRS 20 Factors have been met, and must paid wages via payroll.

Foundation Human Resources will review all Independent Contractor requests and apply the ABC testing criteria to determine if the individual is classified correctly prior to commencement of work. After completion of the testing, departments will be notified if the request has been approved or denied. Failure to obtain prior approval may delay payments.

Working with Minors

Independent Contractors working in direct contact with minors are required to submit evidence of a Live Scan clearance. If a Live Scan clearance is not available, independent contractors may be required to submit to a Live Scan background check through Foundation.

Insurance Requirements

Independent Contractor engagements with an expense of 10K or more must agree to maintain general liability coverage (or a program of self-insurance), comprehensive or commercial, with minimum limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and workers compensation as required by law (workers compensation is only required for contractors who hire employees to assist with the job). Such coverage must be obtained from a carrier rated at least A: VII or better by AM Best.

In the event the contractor is working with or will have access to minors, the Independent Contractor must agree to maintain general liability coverage (or a program of self-insurance), comprehensive or commercial form, regardless of the expense threshold, with minimum limits of at least \$1,000,000 per occurrence, \$3,000,000 general aggregate, and workers compensation as required by law (workers compensation is only required for contractors who hires employees to assist with the job).

Procedure

To initiate the use of an independent contractor, an Independent Contractor Request form must be submitted. Program Departments or the appropriate administrator are responsible for completing and submitting appropriate documents prior to the commencement of work by completing the Independent Contractor Request form.

Upon completion of the Independent Contractor Request form, it must be submitted along with the following documents to CF@csudh.edu for review.

1. Independent Contractor Standard Agreement
2. Scope of Work/Fee Schedule
3. Proof of Insurance (if applicable)
4. Purchase Order Request/Justification
5. Vendor Data Form must be submitted separately to [Secured Data Dropbox](#) per form instructions.

All forms will be routed internally for additional signatures as necessary. If an Independent Contractor is being hired on a grant, the documents will be routed to Post Award for approval. An agreement is not valid until all parties listed on the agreement have signed and Foundation HR has confirmed the Independent Contractor status. Only then is the agreement considered fully executed.

Request for Independent Contractor Payment

Upon completion of the agreed upon work, the independent contractor must send the invoice directly to the department or responsible party for certification. The department must certify that the work has been completed per the agreed upon specification in the scope of work by signing the invoices.

There are two methods to request payment for services rendered.

1. Paper copies of certified invoices may be submitted to Patty Young, pyoung@csudh.edu for payment processing; or
2. Payment requests for invoices may be submitted via Workflow in ONESolution utilizing the "User Tab". Please note when entering the purchase order number, dashes should be omitted.
ONESolution Login link: <https://oneportal.dhillcloud.aspgov.com/Citrix/StoreWeb/>

Resources and Forms

Please refer to Foundation policies and procedures to ensure alignment. The most recent policies and procedures can be found on Foundation's website, <https://csudhfoundation.com/>. Noteworthy policies and forms include the following:

- Hospitality Policy
- Foundation Service Agreements Guide
- [Independent Contractor Request Form](#)
- [Independent Contractor Standard Agreement](#)
- [Purchase Order/Justification Form](#)
- [Vendor Data Record](#)