
Independent Contractor

To be an independent contractor, substantial conformance with the following conditions must exist:

1. The contractor controls the way in which work is performed.
2. The contractor sets his or her own hours.
3. The contractor is not restricted from taking jobs from other businesses at the same time that they are doing work for the District.
4. No District employees have duties similar to the independent contractor
5. The District does not provide assistants to the contractor.
6. The duration of employment is for a specific job, not for a specified period of time.
7. The District does not furnish tools, training, or equipment to the contractor.
8. The contractor has employer identification numbers with the Internal Revenue Service and the California Employment Development Department for reporting employer payroll taxes and employee wages.
9. The contractor can provide proof of \$1,000,000 liability insurance coverage.
10. The contractor can provide proof of worker's compensation insurance coverage.
11. The individual is not presently employed by the District to do the same type of work.
12. Contractors are hired to provide a result and usually have the right to hire others to do the actual work.
13. Usually contractors don't have a continuing relationship with a hiring company. The relationship can be frequent, but it must be at irregular intervals, on call, or whenever work is available. Warning: Part-time, seasonal, or short duration relationships have nothing to do with independent contractor status.
14. Contractors control where they work. If they work on the premises of the hiring company, it is not under that company's direction or supervision.
15. Contractors determine the order and sequence that they will perform their work.
16. Contractors are hired for the final result, and therefore should not be asked for progress or interim reports.
17. Contractors are generally responsible for their incidental expenses.

18. Contractors should be able to perform their services without the hiring company's facilities (equipment, office furniture, machinery, etc.). The contractor's investment in his trade must be real, essential, and adequate.
19. Contractors make their services available to the general public by one or more of the following:
 - A. Having an office and assistants;
 - B. Having business sign;
 - C. Having a business license;
 - D. Listing their services in a business directory; and,
 - E. Advertising their services,
20. Contractors should be able to make a profit or a loss. Employees can't suffer a loss. Five circumstances show that a profit or loss is possible:
 - A. If the contractor hires and pays assistants;
 - B. If the contractor has his own office, equipment, materials, or facilities;
 - C. If the contractor has continuing and re-occurring liabilities;
 - D. If the contractor has agreed to perform specific jobs for prices agreed upon in advance; and,
 - E. If the contractor's services affect his own business reputation
21. Contractors can't be fired so long as they produce a result which meets the contract specifications.
22. Contractors are responsible for the satisfactory completion of a job or they may be legally obligated to compensate the hiring firm for failure to complete.

If substantial conformance to the above conditions is not met, the District may be able to treat the individual as a contractor if it can show that there are judicial precedents, published rulings, letter rulings issued to past IRS audits or long-standing recognized practices within the government for treating this position as an independent contractor. For instance, Education Code section 87486 gives contractor status to adult readers.

Consultants

Consulting services contracts as described in Public Contracts Code Section 10356 means all services which are of an advisory nature, provide a recommended course of action or personal expertise, have an end product which is basically a transmittal of information either written or verbal and which is related to the governmental functions of state agency administration and management and state agency program management or innovation, and which are obtained by awarding a procurement-type contract, a grant, or any other payment of funds for services of the above type. The product may include anything from answers to specific questions to design of a system or plan and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

To be considered an independent contractor, consultants must also conform to the criteria set forth above.

If the above conditions for an independent contractor are not met, in order to work for the District, the individual must be hired as an employee under provisions of Policy 4.5.4.