

Procurement and Contracts

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INDEPENDENT CONTRACTORS POLICY AND PROCEDURE

POLICY OVERVIEW

The purpose of this policy is to provide direction, clarification, and best practices for the engagement of independent contractors within CSUDH. These new procedures became effective as a result of the 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 determines the employment relationship.

In light of the Dynamex Test, **before services are performed**, CSUDH 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.

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 be paid wages via payroll. Examples of worker roles that must undergo this qualification process include, but is not limited to, Lecturers, Instructors, Advisors, Guest Speakers / Teachers, and Researchers.

For more information, please view the CSU Independent Contractor Guidelines – Independent Contract vs Employee Determinations - Update [Technical Letter HR/Salary 2021-07](#), dated April 19, 2021.

PROCEDURES

Please refer to the Independent Contractor Determination process flow diagram for guidance.

Work must not commence until a Purchase Order has been executed

Department's Processing Instructions

1. Obtain the worker's scope of work/proposal detailing, at a minimum, the services to be provided, service timeframe, and itemized costs.
2. Determine if the proposed services fall under an existing CSU classification (contact HR for questions)
3. Complete and obtain Department Head's signature for the [Independent Contractor Request Form](#). Using the Independent Contractor Request Form, determine the worker's:
 - a. Ability to meet **all** ABC test criteria (Section 4)
 - b. Relationship with the University (Section 5)
 - c. Classification designation (Section 6)
4. After completing #3, if the worker **should** be designated as an independent contractor, then create a requisition in PeopleSoft and:
 - a. Request that the worker complete STD204 (if new vendor); please notify procurement once the STD204 has been uploaded by the worker
 - b. Attach both the signed Independent Contractor Form and scope of work (See [Scope of Work Template](#) for guidance) to the requisition.

Note: If the worker does **not** meet the criteria for an Independent Contractor, please contact Human Resources at extension 3771 to process the worker as an employee.

Procurement & Contracts Requisition Review / Processing

1. Upon receipt of the requisition, conduct review of submitted documentation and requisition.
2. Contact the department and/or worker for additional documentation and/or clarification.
3. Send to Human Resources for final review / approval.
4. Once approved by Human Resources, obtain certificate of insurance, process the requisition, and notify the requesting department when complete.

Human Resources Review / Processing

1. Render final decision on Independent Contractor or Employee after reviewing submitted documentation.
2. Request for additional documentation if required, inclusive of background check if applicable
3. Contact the requesting department if the candidate is deemed an employee.