

INDEPENDENT CONTRACTOR POLICY & PROCEDURES



- ✓ Independent Contractor (IC) vs Employee Defined
- ✓ IC Policy Change
- ✓ IC vs Employee
- ✓ IC Request Form Review
- ✓ Cherwell

IC VS Employee Defined

EMPLOYEE: AN INDIVIDUAL IN AN EMPLOYMENT SITUATION IN WHICH THE EMPLOYER HAS THE RIGHT TO CONTROL AND DIRECT THE INDIVIDUAL WITH REGARD TO THE RESULT TO BE ACCOMPLISHED AND THE PROCESS BY WHICH THE RESULT IS ACCOMPLISHED.

INDEPENDENT CONTRACTORS: INDIVIDUALS WHO RENDER A SERVICE AND MEET CONTRACTOR CONDITIONS ESTABLISHED BY THE IRS. THEY TYPICALLY HAVE A SEPARATE WORKPLACE, ARE NOT SUPERVISED, AND HAVE A PARTICULAR SET OF SKILLS NOT AVAILABLE ELSEWHERE WITHIN THE ORGANIZATION. THEY ARE NOT ENTITLED TO EMPLOYEE BENEFITS, ARE NOT COVERED BY WORKERS' COMPENSATION.

AB - 5

Under Federal law, a worker is either an employee or an independent contractor. An individual cannot be both an employee and an independent contractor for the same employer at the same time. For this reason, CSU adopts a single test for determining whether a person is an employee or independent contractor. That test is the one adopted by the California Supreme Court in its *Dynamex Operations West, Inc. v. Superior Court* decision, because it will yield a result that complies with all applicable classification rules. We will refer to this as the Dynamex Test.

Resources

- [Independent Contractor Guidelines](#)
- [Assembly Bill - 5](#)

INDEPENDENT CONTACTOR (IC) POLICY CHANGE

(1) DYNAMEX TEST (“ABC TEST”) UNDER THE DYNAMEX TEST, A WORKER IS PRESUMED TO BE AN EMPLOYEE UNLESS THE CSU ESTABLISHES EACH OF THE FOLLOWING REQUIREMENTS:

- THE WORKER IS FREE FROM THE EMPLOYER’S CONTROL AND DIRECTION. THIS MEANS THAT THE HIRING ENTITY MUST NOT BE ABLE TO CONTROL OR DIRECT WHAT THE WORKER DOES, EITHER BY CONTRACT OR IN ACTUAL PRACTICE; AND

INDEPENDENT CONTACTOR (IC) POLICY CHANGE

- THE WORKER PERFORMS A SERVICE THAT IS EITHER OUTSIDE THE USUAL COURSE OF THE BUSINESS FOR WHICH SUCH SERVICE IS PERFORMED OR THAT SUCH SERVICE IS PERFORMED OUTSIDE OF ALL THE PLACES OF BUSINESS OF THE ENTERPRISE FOR WHICH SUCH SERVICE IS PERFORMED. FOR EXAMPLE, A CAMPUS CANNOT HIRE A FACULTY IN COUNSELING TO WORK AS AN INDEPENDENT CONTRACTOR FOR THE PURPOSES OF CONFLICT RESOLUTION OR HIRE INSTRUCTORS TO TEACH A CERTIFICATE PROGRAM AS INDEPENDENT CONTRACTORS . NOR CAN A CAMPUS HIRE AN INDEPENDENT CONTRACTOR TO PERFORM IT SERVICES THAT ARE ALREADY BEING PERFORMED BY CAMPUS STAFF ; AND

INDEPENDENT CONTRACTOR (IC) POLICY CHANGE

- THE WORKER CUSTOMARILY ENGAGES IN AN INDEPENDENTLY ESTABLISHED TRADE, OCCUPATION, PROFESSION, OR BUSINESS. FACTORS RELEVANT TO THIS DETERMINATION INCLUDE WHETHER THE BUSINESS IS INCORPORATED OR LICENSED, WHETHER THE SERVICES ARE ADVERTISED, AND WHETHER THE CONTRACTOR ALSO OFFERS SERVICES TO THE PUBLIC OR OTHER POTENTIAL CUSTOMERS.

IT IS THE CAMPUS' BURDEN TO SATISFY (1), (2) AND (3) TO ESTABLISH THAT THE WORKER IS AN INDEPENDENT CONTRACTOR . IF IT FAILS TO ESTABLISH ANY ONE OF THESE THREE REQUIREMENTS, THE WORKER MUST BE TREATED AS AN EMPLOYEE. THERE ARE VERY FEW CIRCUMSTANCES IN WHICH INDIVIDUALS CAN PROPERLY BE CONSIDERED INDEPENDENT CONTRACTORS.

INDEPENDENT CONTACTOR (IC) POLICY CHANGE

(2) OTHER LIMITATIONS & RESTRICTIONS

CAMPUSES MAY
NOT CONTRACT
WITH CURRENT OR
RECENTLY
SEPARATED CSU
EMPLOYEES

PROCTORS ,
READERS AND
GARDENERS

CURRENT CSU
FACULTY MEMBERS
(MUST CONSIDER
ADDITIONAL
EMPLOYMENT FTE
MAXIMUM)

INDEPENDENT CONTRACTOR (IC) POLICY CHANGE

(3) IMPORTANCE OF PROPER CLASSIFICATION?

MISCLASSIFICATION OF WORKERS – VIOLATIONS AND PENALTIES IT IS IMPORTANT TO DETERMINE THE CORRECT CLASSIFICATION OF WORKERS AS EMPLOYEES OR INDEPENDENT CONTRACTORS.

CALIFORNIA LAW ALLOWS CIVIL PENALTIES TO BE CHARGED TO EMPLOYERS THAT INTENTIONALLY MISCLASSIFY WORKERS. THE FINE CAN RANGE BETWEEN \$5,000 AND \$15,000 PER VIOLATION, AND IF THERE IS A PATTERN OF WILLFUL MISCLASSIFICATION, THE COURTS CAN FINE EMPLOYERS AN ADDITIONAL \$10,000 TO \$25,000.

INDEPENDENT CONTRACTOR (IC) POLICY CHANGE

3. IMPORTANCE OF PROPER CLASSIFICATION?

THIS DISTINCTION IS SIGNIFICANT BECAUSE AN INCORRECT DETERMINATION COULD RESULT IN THE FOLLOWING:

- WAGE LIABILITY, INCLUDING OVERTIME;
- BENEFIT LIABILITY, INCLUDING RETIREMENT;
- LOSS OF REIMBURSEMENT UNDER FEDERAL CONTRACT AND GRANT FUNDS;
- PENALTIES FOR VIOLATION OF STATE AND FEDERAL TAX WITHHOLDING LAWS;
- PENALTIES FOR VIOLATION OF FEDERAL LAWS PERTAINING TO THE EMPLOYMENT OF NONRESIDENT ALIENS (FORM I-9).

IN ADDITION, THE FOLLOWING EMPLOYMENT-RELATED REQUIREMENTS MAY BE VIOLATED:

- STATE POLITICAL REFORM ACT FINANCIAL CONFLICT OF INTEREST RULES;
- WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE COVERAGE REQUIREMENTS.

HUMAN RESOURCES

Human Resources verifies that the work does not fall within a CSU Classification.

In the event that Human Resources identifies the scope of work to be in line of a CSU Classification, the department must follow the appropriate campus hiring guidelines via the Talent Acquisition process.

Union Notice for Staff Classification Determination:
Employee & Labor Relation.

90 day written notice to Union, 30 day for response - total 120 days.

Departments should be active and not reactive regarding Independent Contractor requests.

MASTER ENABLING CONTRACT (MEA)

Third party vendors that have an active Master Enabling Contract (MEA) should work directly with Procurement.

IC VS EMPLOYEES

INDEPENDENT CONTACTOR *

- ART MODEL
- BOOK PUBLISHER
- GRANT EDITOR
- PERFORMER/ARTIST/MUSICIAN
- SPEAKERS
- RADIO ANNOUNCERS
- CHOREOGRAPHERS
- GAME OFFICIALS

VS

EMPLOYEE

- WORK UNDER ANY CSU CLASSIFICATION

* TO BE REVIEWED BY PROCUREMENT AND HR, MUST REVIEW CLASSIFICATION GUIDELINES, ABC TEST, CSU RELATIONSHIP, AND THE BORELLO TEST.

EXEMPTIONS TO ABC TEST & APPLICABILITY OF BORELLO TEST

- EXEMPTION TO ABC TEST (DEFAULT TEST)
- ASSEMBLY BILL 2257 (BORELLO TEST)

EXEMPTIONS

- IF THE EXEMPTIONS APPLY, THEN THE DETERMINATION OF EMPLOYEE OR INDEPENDENT CONTRACTOR STATUS SHALL BE GOVERNED BY THE BORELLO TEST.

PROCUREMENT AND CONTRACTS WILL WORK WITH HR AND LEGAL COUNSEL ON APPLICABILITY

Cherwell

Save Cancel Refresh Delete Attach (0) Record 1 of 1 Current Record List Grid

Attach File **Save as Draft** **Submit** HR Request ID: 202311468

Remove File

Required fields are indicated with an *

* **Note: Please attach all independent contractor information including the justification and the quote.**

Current Information

Employee's ID: Employee's Full Name: Employee's Department:

* Independent Contractor Information

Contractor's Name:

Contractor's Business Name: (If applicable)

Business Address: Business City/State:

Contractor's Email: Contractors Phone Number:

Check one:
 Sole Proprietorship Partnership Corporation LLC Other

Is the Contractor Licensed? Yes No

If Yes, list license type:

IC WEBPAGE

The screenshot shows the top navigation bar with links for Home, Talent Acquisition, Class & Comp, Student Employment, Current Employees, Benefits, and Forms. The main heading is "Independent Contractor Information" under the "Human Resources" section. The page is divided into two columns. The left column has an "Overview" section with text explaining the purpose of the information and the consequences of misclassification. Below this is a button for "Technical Letter HR/Salary 2021-07". The right column has a "Process Overview" section with a video player. The video player shows a slide titled "Violations and Penalties" with a list of consequences for misclassification, including wage liability, benefit liability, loss of reimbursement, and penalties for tax withholding laws.

Human Resources

Independent Contractor Information

Home ▾ Talent Acquisition ▾ Class & Comp ▾ Student Employment ▾ Current Employees ▾ Benefits ▾ Forms

Overview

The objective of the Independent Contractor Information is to provide direction, clarification, and best practices for the engagement of independent contractors within the CSU, and CSUSB.

CSUSB must comply with State/Federal laws and CSU policies regarding the proper classification of employees and independent contractors. Misclassification of a worker as an independent contractor can result in serious wage and benefit obligations, financial penalties, tax consequences, and other liabilities.

For more information, please view

[Technical Letter HR/Salary 2021-07](#)

Independent Contractor Procedure Changes

Since the introduction of AB5 in January, a change to the independent contractor process has occurred. Effective immediately, all requests for independent contractors must go through Human Resources for review. Human Resources' Classification & Compensation Services (CCS) will determine whether or not the worker can be categorized as an "independent contractor". Note that AB5 assumes that all workers are considered "employees" until certified otherwise by the criteria outlined by the new regulation.

On April 30, 2018, the California Supreme Court adopted 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 CSUSB contracts with both independent contractors and companies (i.e. those hired through Purchasing). Below you will find the main changes that will impact departments.

Independent Contractor Process Overview

Violations and Penalties

0 Independent Contractor...

- Wage liability, including overtime
- Benefit liability, including retirement and health insurance
- Loss of reimbursement under Federal contract and grant funds
- Penalties for violation of State and Federal tax withholding laws

Penalties for violation of Federal laws pertaining to the employment of nonresident aliens (Form I-9). In addition, the following employment-related requirements may be violated:

- Political Reform Act financial disclosure rules
- Worker compensation and unemployment insurance coverage requirements

CSUSB WE DEFINE THE FUTURE

[HTTPS://WWW.CSUSB.EDU/HUMAN-RESOURCES/CLASSIFICATION-COMPENSATION-SERVICES/INDEPENDENT-CONTRACTOR-INFORMATION](https://www.csusb.edu/human-resources/classification-compensation-services/independent-contractor-information)



DO NOT START WORK UNTIL THE
APPROVAL PROCESS HAS BEEN
COMPLETED BY PROCUREMENT AND HR.



Questions ?

CONTACT INFORMATION

Julio Arevalo

Director, Talent Acquisition,
Classification &
Compensation

909-537-4315

Julio.Arevalo@csusb.edu

Jovi Galazar

Classification &
Compensation Analyst

909-537-3442

Jovi.Galarza@csusb.edu

Teresa Villa

Executive Director & Chief
Procurement Office

909537-3145

Teresa.Vila@csusb.edu

Jairo "JC" Cortez

Lead Procurement
&
contract Specialist

909-537-3524

JCortez2@csusb.edu