

# Independent Contractor Procedures

## Summary

The Independent Contractor process is a multi-step process to ensure that CSUSB complies 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 considerable wage and benefit obligations, financial penalties, tax consequences, and other liabilities.

## Determination of Independent Contractor

Procurement in collaboration with the Human Resources division is responsible for establishing or updating internal procedures to comply with the CSU Independent Contractor guidelines. It is important that the CSUSB department MPPs, state side and auxiliary Human Resources, Procurement Office, as well Faculty Affairs & Development designee be involved for all or a portion of the independent contractor process.

## Independent Contractor Criteria

Under the Dynamex Test, a worker is presumed to be an employee unless the CSUSB establishes each of the following requirements: (1) 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 (2) 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 (3) 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 CSUSB's 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. Under Dynamex, there are few circumstances in which individuals can properly be considered independent contractors. Considering the foregoing, before services are performed, departments desiring to contract for professional services must assess the relationship with the individual and the campus to ensure that the individual is properly classified. CSUSB must consider all the facts and circumstances of each situation.

## AB 2257

Effective September 4, 2020, which outlines additional exemptions to the Dynamex Test for certain occupations and professions. These exemptions only apply if certain criteria are met. If exemptions do apply, the determination of whether the worker should be classified as an independent contractor

is governed by the Borello Test and not the Dynamex Test. The exemptions contained in AB 2257 are highly complex and require detailed analysis as to their applicability. Departments must consult with campus counsel to determine whether these exemptions apply.

### Step 1: Review of Worker & Work

Hiring Department MPP reviews the scope of work being performed by the worker to determine if the work potentially falls under an existing CSU classification. As well as, reviewing if the worker qualifies as an Independent Contractor.

#### *Questions MPP Should Use to Help Determine Appropriate Action*

- Does the worker potentially fall under an existing CSU Classification?
- Does the Worker qualify as an Independent Contractor?
  - Does the worker meet All ABC Test Criteria?
  - Does the Worker qualify as an Independent Contractor under an exemption?
  - Does the worker meet the Borello Test Criteria?
  - Is the worker a current CSUSB, other state agency employee, or have they been extended an offer of employment?

### Step 2: Confirmation of Worker & Work Meet Independent Contractor Criteria

The Independent Contractor Request is created to ensure CSUSB confirms that the **work** to be performed can be done by an independent contractor and not an employee. Also, the **worker** must be evaluated to confirm that they meet the independent contractor criteria. Human Resources verifies that the work does not fall within a [CSU Classification](#). Procurement verifies that the worker qualifies as an Independent Contractor.

#### *Scope of Work Confirmation (Dynamex Requirement 1 & 2):*

- State Side Staff Classifications: Classification & Compensation Services
- Union Notice for Staff Classification Determination: Employee & Labor Relations
- State Side Faculty Classifications: Faculty Affairs & Development
- Union Notice for Faculty Classification Determination: Faculty Affairs & Development
- Auxiliary IC Requests: Auxiliary Human Resources

#### *Worker Confirmation (Dynamex Requirement 3):*

- Procurement

**IC Request Denied: Hire as Staff through Talent Acquisition or Faculty Affairs & Development for faculty.**

**IC Request Approved: Department Submits CFS procurement requisition.**

### Step 3: Engagement of Independent Contractor for Services & – Check Residency Status for Employment and Tax/Reporting Purposes

The engagement of an independent contractor for services is generally covered by the campus's standard requisition and general terms and conditions of service. A specific independent contractor agreement may also be used. Agreements must be reviewed and signed by the campus procurement/contracts office in accordance with CSU policy.

The following forms/documents may be required by the campus procurement/contracts office prior to retaining services:

- Campus Independent Contractor Request and Determination approval form.
- Requisition
- Scope of Work
- Proof of Insurance (including Certificate of Insurance with Additional Insured Endorsement)
- Proof of Background Check (If required)
- Vendor Data Record form (STD 204)
  - The Vendor Data Record Form should be completed before work commences and must be completed before payment can be issued. This form is mandatory for all vendors paid by the campus.

Independent contractors that operate under the CSU name or on CSU property are responsible for ensuring that their employees have had background checks if they perform duties that the CSU considers to be sensitive or that would require a background check by law.

Classification and Compensation will determine if the scope of work requires a Background Check in accordance with HR 2017-17. If an Independent Contractor (IC) request is moved forward through the Procurement approval process, Procurement will ensure that the IC has been Background Checked, in the event that a check is needed, Procurement will work with Talent Acquisition to initiate the Background Check process before any work is performed.