



## Independent Contractor Guidelines

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### Purpose

The purpose of the Independent Contractor Guidelines is to help district employees determine whether the individuals providing services are employees or independent contractors. The Internal Revenue Service (IRS) requires for any business to withhold income taxes, withhold and pay Social Security and Medicare taxes and pay unemployment tax on wages paid to an employee. When an Independent Contractor is hired, the district generally does not have to withhold or pay any taxes. It is important for tax reporting purposes with IRS to understand the differences and report the proper status to avoid negligence penalty or other sanctions to the district.

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### General Policy Statements

1. Before setting up a contract/service agreement and payment method, you must first determine the business relationship between you and the person providing services.
2. An "Independent Contractor" generally offers services to the general public. The IRS states "The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the results of the work and not what will be done and how it will be done." An independent Contractor is paid a flat fee or on a time and materials basis for the job. However, some contracts may pay independent contractors on an hourly basis.
3. An "Employee" is when the district can control how the services performed, what will be done and how it will be done. The IRS states "This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed," An employee is guaranteed a regular wage amount for an hourly, weekly, or other period of time.
4. The district will not contract or pay a district employee as an Independent Contractor regardless of the type of duties performed.
5. The IRS provides common law factors to help determine whether an employer's control over an individual is sufficient to establish an employer/employee relationship.  
Example of factors are:
  - a) **Behavioral Control:** An Independent Contractor is generally not given instructions on how to perform services or how to complete the project. Below is a list provided by the IRS to help determine the types of instructions:
    - When and where to do the work
    - What tools or equipment to use
    - What workers to hire or to assist with the work
    - Where to purchase supplies and services
    - What work must be performed by a specified individual
    - What order or sequence to follow
  - b) **Financial:** The financial control refers to the facts that indicate whether or not the district has the right to control any financial aspects of the worker's job.
    - Independent Contractors generally do not have reimbursed expenses. All services are fixed ongoing costs and are included in the contract amount.
    - Independent Contractors have an investment and a chance for profit or loss.
    - Independent Contractors can market their services to the public.
    - Independent Contractors generally are paid a flat fee for services. In some cases, such as law, the contract may be set at an hourly rate and not to exceed a certain amount of hours or cost.

- c) **Type of Relationships:** As stated above in section 1. Before setting up a contract/service agreement and payment method, you must first determine the business relationship between you and the person providing services.
  - o The IRS does not have to abide by the written contracts; it is how you and the person providing services work together that determines if it is an employee or independent contractor.
  - o Benefits are not provided to independent contractors for the work they are doing.
  - o Generally, an independent contractor will have a specific project or time period to complete. Independent Contractors are not hired to work indefinitely.
  - o Services provided as the key activity of the district are more likely to be an employee. The district representative will direct and control project or work completed.

6. If you have questions please contact the Contracts Office or visit [www.irs.gov](http://www.irs.gov).

**Procedures for Hiring an Independent Contractor**

1. When you determine the services provided are by an independent contractor:
  - ✓ Set up a service contract. More information is provided on the district's Contract Department web page <http://www.scusd.edu/contracts-department>.
  - ✓ Must complete a W-9 form <https://www.irs.gov/pub/irs-pdf/fw9.pdf>
  - ✓ The district will complete a 1099-MISC form for independent contactors paid \$600 or more for services during the year.
  - ✓ When an employer files a 1099-MISC, independent contractors should be aware of their tax responsibilities with the IRS.

**Policy Reference**

Consultants Board Policy	<b>BP 3600</b>
Internal Revenue Service <a href="https://www.irs.gov/Businesses/Small-Businesses-&amp;-Self-Employed/Independent-Contractor-Self-Employed-or-Employee">https://www.irs.gov/Businesses/Small-Businesses-&amp;-Self-Employed/Independent-Contractor-Self-Employed-or-Employee</a>	