

INDEPENDENT CONTRACTOR CHECKLIST

Date Independent Contractor Commences: _____

Name of Independent Contractor: _____

Review and answer each question with yes or no and forward to HR for review

Yes

No

1. Will the independent contractor instruct, supervise or lead other LMU workers while he or she is working?

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Independent contractors are free to do jobs in their own way, using specific methods they choose. A person or firm engages an independent contractor for the job's end result. When a worker is required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the independent contractor quit or be discharged (fired) at any time before the work is completed?

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If you have the right to fire the worker at will and without cause, it indicated that you have the right to control the worker.

Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms or the contract. They are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires a licensed painter to paint the store, and the work had started, the store owner would not be able to just terminate the painter, without there being a good reason or just cause for doing so.

3. Is the work being performed part of your regular business or are the services consistent with or similar to work other faculty/staff perform?

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Work which is a necessary part of the regular trade or business is normally done by employees. For example, a sales clerk is selling shoes in a shoe store. A shoe owner could not operate without sales clerks to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a one-time or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

4. Does the independent contractor have a separately established business?

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When individuals hold themselves out to the general public as available to perform services similar to those performed for you, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their employees without your knowledge or consent, Independent contractors can normally advertise their services in newspapers and or publications, the internet, yellow page listings, radio, television, and/or seek new customers through the use of business cards.

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5. Is the independent contractor free to make business decisions which affect his or her ability to profit from the work?		
<i>An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposal of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and the selections of the types and amounts of insurance coverage for the business.</i>		
6. Does the individual have a substantial investment which would subject him or her to financial risk of loss?		
<i>Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete the task. To the extent necessary for the specific type of business, independent contractors provide their own business facility.</i>		
7. Do you have faculty/staff who do the same type of work?		
<i>If the work being done is basically the same as work that is normally done by your employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, a worker is hired to fill in on a temporary basis. The worker is a temporary employee, not an independent contractor.</i>		
8. Will you furnish the tools, equipment, or supplies used to perform the work?		
<i>Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete the tasks.</i>		
9. Is the work considered unskilled or semi-skilled labor?		
<i>The courts and the California Unemployment Insurance Appeals Board have held that workers who are considered unskilled or semi-skilled are the of workers the law is meant to protect and are generally employees.</i>		
10. Will you provide training for the worker?		
<i>In skilled or semi-skilled work, independent contractors usually do not need training. If training is required to do the task, it is an indication that the worker is an employee.</i>		
11. Is the worker paid in a fixed salary, an hourly wage, or based on piece of rate basis?		
<i>Independent contractors agree to do a job and bill for the service performed. Typically, payments to independent contractors for labor or services are made upon the completion of the project or completion of the performance of specific portions of the project</i>		

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12. Did the independent contractor previously perform the same or similar services for you as faculty/staff?		
<i>If the worker previously performed the same or similar services for you as an employee, it is an indication that the individual is still an employee</i>		
13. Does the worker believe that he or she is faculty/staff?		
<i>Although belief of the parties is not controlling, intent of the parties is a factor to consider when making an employment or independent contractor determination. When both the worker and principal believe the worker is an independent contractor, an argument exists to support an independent contractor relationship between parties.</i>		
14. Are you contemplating that the worker may be hired at the end of the independent contractor engagement?		
<i>If the worker has performed the same or similar services for you as an independent contractor, it is an indication that the individual was not an independent contractor.</i>		

Checklist completed by: _____
Name
Date
Ext

Human Resources will review the Independent Contractor Worksheet, description of services and other information submitted to determine employment versus independent contractor status. If the engagement meets the criteria for independent contractor status the forms will be approved and forwarded to Risk Management. If the engagement does not meet the criteria for independent contractor status, the forms will be returned and the employment process must be followed.

Checklist reviewed by: _____
Human Resources
Date
Ext

Approved

Rejected