

VENTURA COUNTY OFFICE OF EDUCATION

ADMINISTRATIVE
REGULATION NO. 3312.2

ADOPTED: 02/14/96

CLASSIFICATION: General Administrative Policies

REVISED: 01/17/02

SUBJECT: Independent Contracts

Independent Contracts

A. The management staff member requesting authorization to utilize the services of a consultant shall make the following determinations:

1. Consultant versus Employee - The following common law rule shall be used to determine if the required services are most appropriately provided by an employee or a consultant.

A worker is an employee under the common law rule if the person for whom he/she works has the right to direct and control him/her in the way he/she works. The employer need not actually exercise the control; it is sufficient that he/she has the right to do so. Where the employer does not possess that right, the individual involved is an independent contractor, not an employee.

There are a number of factors that may aid in the determination of whether the requisite right of direction and control exists in a given situation. No one or small group of them is necessarily controlling. The factors are to be weighed against those that indicate an independent contractor status. Note that the relative importance of any one factor may vary depending on the occupation under consideration. The following is a list of some of the factors to be considered:

- a. ***Work done on premises.** An employee works on the premises of an employer or works on a route or at a location designated by an employer.
- b. ***Tools and materials.** An employee is furnished significant tools, materials, and other equipment by an employer.
- c. ***Investment.** An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else.

**Case law has determined these factors to be of greatest significance.*

- d. ***Works for more than one person or firm.** An independent contractor gives his/her services to two or more unrelated persons or firms at the same time.
- e. ***Offers services to general public.** An independent contractor makes his/her services available to the general public.
- f. ***Resignation.** An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete it.
- g. **Instructions.** An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.
- h. **Training.** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
- i. **Integration.** An employee's services are integrated into the business operations because the services are important to the success or continuation of the business, and accordingly the employee is subject to direction and control.
- j. **Services rendered personally.** An employee renders services personally, and the employer is interested in the methods as well as the results.
- k. **Hiring assistants.** An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor and to be responsible only for the result.
- l. **Continuing relationship.** An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring, although irregular, intervals.
- m. **Set hours of work.** An employee has set hours of work established by an employer. An independent contractor is the master of his/her own time.
- n. **Full-time work.** An employee normally works full time for an employer. An independent contractor can work when and for whom he/she chooses.

**Case law has determined these factors to be of greatest significance.*

- o. **Order or sequence set.** An employee must perform services in the order or sequence set by an employer.
 - p. **Reports.** An employee submits reports to an employer, demonstrating the employee must account to the employer for his/her actions.
 - q. **Payments.** An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
 - r. **Expenses.** An employee's business and travel expenses are paid by an employer, and the employee is subject to regulation and control.
 - s. **Profit or loss.** An independent contractor can make a profit or suffer a loss.
 - t. **Termination.** An employee can be fired by an employer. An independent contractor cannot be fired so long as he/she produces a result that meets the specifications of the contract.
 - 2. Required Licenses - The consultant holds all licenses required to perform requested services.
- B. Consultants shall not be retained to perform the following services:
- 1. Direct instruction to pupils.
 - 2. Educational or vocational counseling, guidance, and placement services.

LEVELS OF SERVICE	LEVELS OF EXPERTISE		
	Minimum 1	Medium Local Recognition 2	Maximum State/National Recognition 3
Level I Assists in activities Surveys Compiles Proofs Observes Analyzes Interviews Edits	\$125/day	\$175/day	N/A
Level II Directs Develops and/or conducts training or workshops Coordinates activities Consults Designs research Synthesizes Writes	\$125-175/day	\$300-550/day	\$600-900/day
Level III Makes keynote speech Major conference presenter Makes medical/dental consultations or diagnoses Consults at a high level of skill or expertise Plans Implements major planning Evaluates Motivates	\$350/day	\$600-900/day	\$700-1,800/day