

Employee / Independent Contractor Worksheet

In California, a worker is presumptively an employee unless the employer demonstrates otherwise. Due to recent changes in California law, a new test was established to determine whether a worker may be classified as an independent contractor. This worksheet asks questions and seeks evidence supporting responses to the questions to help determine whether a service provider should be classified as an employee or an independent contractor. Please submit this completed form to the Business Office at independentcontractor@oxy.edu. The Business Office will work with you to make the determination as to (1) whether the services may be performed by existing Occidental personnel within the scope of their employment, (2) whether a contractor relationship exists and, if not, (3) whether the individual needs to be hired by the college as an employee to perform the work. If you have questions, please call Lupe Salmeron at (323) 259-1423 or Barbara Valiente at (323) 259-1417.

Independent contractors are not permitted to start work for Occidental until the review process described above has been completed. The hiring department should initiate this process at least 14 days before the work is scheduled to begin, to allow time for review. Misclassification of an independent contractor may subject the College to penalties, injunctive relief, and other remedies, and violation of this policy may result in discipline.

Name of Service Provider:

Pre-Approved Independent Contractors

For the following categories of work—and where the proposed independent contractor is *not* otherwise a College employee and is not subject to the College's supervision or control in the performance of work—the hiring department does not need to complete this Employee / Independent Contractor Worksheet. You may simply submit a proposed contract and invoice for these services to the Business Office for approval and payment:

- Guest speaker or lecturer, when providing services during a period of 1 week or less
 - **Note: This does not include those speakers who are receiving an honorarium in place of consideration for the speaking engagement (See Honorarium Policy below).**
- Article reviewer/editor or content contributor to a journal, book, or other academic publication
- Technical/class demonstrator
- Sports referee

All Other Service Providers

There are 2 different tests; the ABC Test and the Borello Test. The classification of most types of service arrangements will be determined using the ABC Test. The classification of certain types of service arrangements, as described below, will be determined using the Borello Test. **If you do not see the type of service you are seeking described under the Borello Test below, please skip to the ABC Test section and respond to the questions under that section.**

Please describe services being provided

Borello / “Economic Realities” Test

The following situations are generally exempt from the ABC Test, and the *Borello* test will apply, as described below.

- **Professional Services Contracts**, including:
 - Services for marketing, human resource administration, graphic design, grant writing, and fine art;
 - Services provided by a photographer, photojournalist, videographer, photo editor, digital content aggregator, freelance writer, translator, editor, copy editor, or illustrator (unless the worker primarily works at Oxy or is directly replacing an existing employee);
 - Services provided by a content contributor, advisor, producer, narrator, or cartographer for a journal, book, periodical, evaluation, other publication or educational, academic, or instructional work in any format or media (with certain restrictions); and
 - Services provided by a licensed real estate appraiser
- **Business-to-business contracting relationships**, where the business service provider is formally registered as a business entity (e.g. corporation, LLC, sole proprietorship) and is not an individual, *and* where the provider is free from the control/direction of Oxy, provides services directly to Oxy, maintains a separate business location, can negotiate its own rates, and sets its own hours and location, among other things.
- **Services for the creation, marketing, promotion, or distribution of sound recordings or musical compositions**, including for the services of: recording artists, songwriters, lyricists, composers, musical engineers, musicians, etc.
- **Services Provided by Certain Types of Professionals:**
 - Musicians or musical groups engaged for a single-engagement live performance event;
 - Individual performance artists;
 - Insurance brokers, securities broker-dealers, and investment advisers;
 - Licensed professionals, including lawyers, physicians, architects, landscape architects, engineers, private investigators, and accountants;
 - Competition judges with specialized skills, including amateur umpires and referees

If you believe the services you are seeking are described above under the Borello Test, please provide the specific type of service as listed above and respond to the questions below and provide any additional information that supports your responses.

The *Borello* test requires the employer to consider multiple factors in determining a person's status, including:

- Does the College have the right to control the details of the work, or the manner and means of accomplishing the work?

Yes

No

- Does the service provider hold them self out as being engaged in an occupation or business distinct from that of the College?

Yes

No

- Is the work a regular or integral part of the College's business?

Yes

No

- Has the service provider invested in their business, such as in the equipment or materials required?

Yes

No

- Does the service provided require a special skill?

Yes

No

- Is the work usually unsupervised or done under the College's direction?

Yes

No

- Does the service provider have the opportunity for profit or loss depending on their managerial skill?

Yes

No

- What is the length of time for which the services are to be performed?

- What is the degree of permanence of the working relationship?

- Is the method of payment by time or by job?

- Does the service provider hire their own employees?

- Does the College have the right to fire at will?

Under this multifactor test, no single factor controls the determination, and the relationship instead depends on the "circumstances of the whole activity."

ABC Test

Is the person free from the control and direction of the College in connection with the performance of the work, both under the contract for the performance of the work and in fact?

Yes

No

Does the person perform work that is outside the usual course of the College's business?

Yes

No

Is the person customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?

Yes

No

Service Provider should be treated as :
Basis for Determination of Service Provider Classification

Date:

Initials: