

Guidelines for the Hiring of Independent Contractors for Antelope Valley College District

Antelope Valley College District must comply with Internal Revenue Service (IRS) regulations in our role as an employer. Failure to do so can result in assessment of additional taxes and penalties for the District. Therefore, it is important to determine whether someone is an employee or an independent contractor.

I. What is an Independent Contractor?

An independent contractor is not an employee and is not under the control of the District. In general, an independent contractor is an individual with a specific skill or technical knowledge hired by means of a written agreement to do a particular job for a designated period of time.

A District employee should not be employed as an independent contractor. The IRS scrutinizes the returns of individuals who receive both a W-2 Form and a 1099 Form in the same calendar year from one employer. If a District employee is hired to perform a service outside the scope of their normal duties, he/she must be paid through the payroll process.

II. Determination of Employee vs. Independent Contractor Status

The following guidelines can assist you in determining whether to pay an individual as an independent contractor or as an employee of Antelope Valley College District.

Independent Contractor Checklist (attached)

Complete this checklist to help determine if an individual is eligible as an independent contractor or is to be paid as an employee. If further clarification is required, the EDD Employment Determination Guide is an excellent resource to help determine independent contractor status.

EDD Employment Determination Guide

The worksheet is provided by the Employment Development Department, State of California to help determine whether a worker is most likely an employee or an independent contractor. Generally speaking, whether a worker is an employee or an independent contractor depends on the application of factors contained in the California common law of employment and statutory provisions of the California Unemployment Insurance Code. The EDD Employment Determination Guide can be accessed at <http://www.edd.ca.gov/taxrep/de38.pdf>.

IRS Common Law Rules

The Internal Revenue Service has established the Common Law Rule to help determine the degree of control and the degree of independence in a worker/employer relationship. The penalties for misclassification under tax laws can be severe and, in some cases, may create liability for the District. Generally, for tax purposes, the key question is the degree of control the employer can exercise over the worker. Further information on the IRS Common Law Rules can be found in IRS Publication 15A under forms and publications at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.

Date: _____

Legal Entity Name of Contractor: _____

The purpose of this checklist is to assist in the determination of employee or independent contractor status per AB5. Federal and State law places the burden of proof on the employer to show that an independent contractor exists.

Questions for ABC Test:

YES **NO**

- | | | |
|---|--------------------------|--------------------------|
| A. Is the worker free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact? | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Is the worker performing work that is outside the usual course of the hiring entity's business? | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed? | <input type="checkbox"/> | <input type="checkbox"/> |

Questions for Borello Test:

YES **NO**

- | | | |
|---|--------------------------|--------------------------|
| 1. Is the service provider an employee of Antelope Valley College District (hereinafter "District"), or has been employed by the District within the past twelve (12) months? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the service provider perform the same type of work that is generally performed by regular employees? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Does the District determine the means and methods by which the results are accomplished? (The District has the right to control only the standards and outcome not the means and the methods). | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Does the District provide supplies, equipment, software and/or tools necessary to perform the services? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Will the District provide training, supervision or instruction other than conveying the scope of the service or results desired? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Does the District establish the individual's work schedule? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the individual required to perform services on the District property on a regular and continuing basis? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Can the service provider be terminated by the District or quit work at any time without incurring liability? | <input type="checkbox"/> | <input type="checkbox"/> |

Completed By: _____

Signature: _____

Title: _____

This checklist excludes agreements for Field Service, Multi-Prime, and General Contractor.

Independent Contractor Checklist

Please provide support for independent contractor status for all "YES" answers:

By signing below, I certify, to the best of my knowledge, that the information provided is correct and that the information contained in the Independent Contractor agreement matches the approved Board item.

Requestor: _____ Date: _____

Approved by: _____ Date: _____

Dean/Director

Once checklist has been completed, submit it along with a **Contract Request form** to your assigned Buyer or Purchasing at purchasing@avc.edu to create the Independent Contractor Agreement.

Please allow adequate time for Agreement to be executed by both parties. Suggested timeframe is 30 days. Please include time for Board to review and approve.