



Santa Clara County Office of Education

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County Superintendent of Schools

Informational Bulletin

For Santa Clara County Districts

District Business & Advisory Services

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Bulletin: 12-051

Date: September 22, 2011

To: District Chief Business Officers
District Fiscal Directors

From: Nimrat Johal

Re: Independent Contractor or Employee

When contracting with an individual for services, the district must establish the nature of the employment relationship. This should occur prior to any services being performed and issuance of any payment. Once the legal relationship is determined, the method of payment is prescribed by law. The problem occurs in the area of who is or is not an employee. There is no clear-cut definition of what constitutes an employee. Instead, there are guidelines that must be analyzed by the District prior to making the determination as to the type of relationship that exists.

The IRS has previously determined that certain positions should be classified as employees. These are positions performing the duties of:

- Administrators
- ASB Workers
- Athletic Coaches
- Attendance Registrars
- Bus Drivers
- Cafeteria Workers
- Clerical Staff
- Categorical Program Coordinators
- Counselors
- Examination Monitors
- Interim staff for any of these positions
- Librarians
- Nurses
- Social Workers
- Substitutes
- Teachers (including special classes such as music, SAT prep, etc.)
- Tutors
- Proctors
- Psychologists

The title given to the position is irrelevant to the analysis of the employment relationship. If the position in question is NOT in one of the above categories, you may use the following guidelines to analyze the employment relationship between the district and the position.

SECTION #1:

1. Will the District provide instruction to the worker on HOW to complete the work?
2. Will the District provide tools or equipment to the worker?
3. Will the worker have office space, telephone, email address that your district provides?
4. Will the worker receive training on processes and procedures?
5. Will the District be hiring assistants for the worker or assigning District staff to be the assistants?
6. Are there currently employees doing substantially the same services that will be required of this individual?
7. Will the worker be reimbursed for expenses?
8. Will the worker receive any employee benefits such as health insurance, vacation, sick days, pension, etc.?

If the response to any of the above questions is **YES**, the District has an employer/employee relationship with the individual and the person should be paid as an employee of the District.

If all the answers to the above questions are **NO** then, proceed to the next section below.

SECTION #2

1. Does the worker have their own business, have other clients and advertise (have website, business cards, clearly offer services to the public)?
2. Will the worker provide the District with a written contract?
3. Can the worker realize a profit or incur a loss?

An answer of **YES to all** of the questions in Section #2 means the individual can be paid as an Independent Contractor. A **NO** answer to any of the questions in Section #2 means the individual should be paid as an employee of the District.

Please use the links below for IRS guidelines on this topic.

Independent Contractor (Self-Employed) or Employee?
<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

IRS Publication 1779: Independent Contractor or Employee?
<http://www.irs.gov/pub/irs-pdf/p1779.pdf>

Employee vs. Independent Contractor – Ten Tips for Business Owners
<http://www.irs.gov/newsroom/article/0,,id=173423,00.html>

Topical Index to Forms, Instructions and Publications - I
<http://www.irs.gov/formspubs/article/0,,id=213636,00.html>

Please distribute this information internally (within your district) as deemed appropriate.