

Foothill-De Anza Community College District

GUIDELINES:

Subject: Determination of Independent Contractor Status

PURPOSE:

To provide guidelines for determining employee status for persons hired by the District as "consultants" or "independent contractors" and restraints of performing service as consultants and independent contractors; and to provide guidelines for reporting of such service.

DEFINITIONS:

Independent Contractor:

The definition as specified in California Labor Code Section 3353: "Independent Contractor means any person who renders service for a specified recompense, for a specified result, under the control of a principal as to the result of a work only, and not as to the means by which such result is accomplished."

An Independent Contractor works independently, normally contracting to receive a set fee for completing a specific scope of work within a specific period of time. An Independent Contractor is not an employee, and such an arrangement must not be used to circumvent employment procedures.

Employee:

Under IRS Common Law Rule guidelines, a worker is an employee if the employer has the right to control not only who performs the job, but also the tools and supplies to be used, what is to be done, how it is to be done, where it is to be done, and when it is to be done. This is true regardless of the duration of the job or certainty of funding to support the job.

GUIDELINES:

Basic Rule:

Individuals hired to perform services for the District should be considered employees except in rare circumstances.

Determination of Employee vs. Independent Contractor status.

Major criteria for determination of employee status would be a) **usual availability** in the community of individuals performing those services, or b) **the usual employment status** of individuals who would normally perform those services for the District.

If persons performing the services under consideration are usually available in the community, then the person hired to perform the services should be hired as an employee. Or, if the usual employment status of individuals normally performing those services for the District is that of an employee, the person hired into the position is an employee.

IRS Publication SWR 40, *Public Schools and Employment Taxes*, lists workers that have already been determined by IRS to be employees. These are individuals performing the duties of:

Administrators	Nurses
Athletic Coaches	Proctors
Cafeteria Workers	Psychologists
Clerical Staff	School Bus Drivers
Counselors	Specialty Teachers (art, poetry, etc.)
Examination Monitors	Substitutes
Individuals "filling in" on an interim basis	Teachers/Instructors
Intern Psychologists	Tutors
Librarians	

The California State Employment Development Department, the Internal Revenue Service, and the Social Security Administration observe the "Common-Law Rule", (see District Pre-Hire Worksheet) in determining employee status. Employers and employees alike should also refer to this document for guidance in establishment of positions and in hiring.