



ADMINISTRATIVE SERVICES

- Independent Contractor vs. Employee Worksheet Determination -

Purpose

Many Barstow Community College (BCC) departments regularly employ the services of individual(s) to perform varying services. These arrangements often raise questions on the status of the individual, such as “Should they be classified as an Employee or an Independent Contractor?” The classification is critical to the proper withholding of income, Social Security, Medicare, and unemployment taxes. Classification is based on IRS guidelines. This procedure provides guidance and information to help correctly classify service providers and is intended to:

1. Provide information about the distinction between employees and independent contractors;
2. Provide a questionnaire to aid in classification determination;
3. Provide a template contract for independent contractor services; and
4. Ensure & provide procedures for proper recordkeeping and tax reporting.

Definitions

Employee: An individual who performs services that are subject to the will and control of an employer – both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.

Independent Contractor: An individual or entity engaged to perform services and commonly referred to as a service provider, consultant, freelancer, contractor, etc. Independent Contractors are responsible for the means and methods for completing the task based on specifications in their contract and are not supervised or controlled by BCC.

Form 1099 Misc.: A form used to report to the Internal Revenue Service (IRS) and the taxpayer various types of earned income, i.e. compensation to independent contractors.

W-9 Form: A form created by the IRS which obligates a person or entity to provide their federal tax classification and taxpayer identification if they are being compensated for performing a service. How a person or entity reports their tax classification on the W-9 form determines how BCC files the appropriate tax documents with the IRS at year-end.

Risk of Misclassification of Independent Contractors

Inaccurate classification of an employee or independent contractor creates a possible tax liability and retirement liability for BCC. Under audit, if the IRS determines that the payment *should have* been made as an employee and not as an independent contractor, BCC could be liable for the payment of all taxes and retirement payments that should have been withheld, plus interest and penalties.

Instructions

1. Please read the attached 20 Common Law Factors to help in making the determination between an employee and an Independent Contractor.
2. Proceed with processing an “Independent Contractor Agreement” form if they are determined to be an Independent Contractor, this will need to be signed by the Superintendent - President **PRIOR** to any work being done. Also have them fill out a W-9 form if it is a new vendor. Agreement **MUST** ultimately be Board approved / ratified.
3. Contact Human Resources for instructions if they are determined to be an employee.

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Employee vs. Independent Contractor Checklist:

When contracting for services, you should use the following checklist to assist in determining whether the individual performing the services will be classified as an **employee** or as an **independent contractor**.

Checklist:

Has the individual been an employee (not as an independent contractor) of BCC in the last 12 months?
Yes___ No___

Does BCC pay an employee(s) who performs essentially the same duties that are to be performed by this individual?
Yes___ No___

Has the individual previously been paid as an employee to perform essentially these same tasks?
Yes___ No___

If any of the above are answered as “yes”, then the individual is an employee and payment must be made through the Human Resources department, otherwise, continue with the following:

1. **Instruction** – Does BCC have the right to require compliance with instruction about when, where, and how the individual is to work?

Yes___ No___

2. **Training** – Will the individual be trained in the job by working with an experienced BCC employee, by required attendance at meetings, seminars, etc.?

Yes___ No___

3. **Integration** – Is the success or continued operation of the Department dependent to an appreciable degree upon the services performed by this individual?

Yes___ No___

4. **Services rendered personally** – Does BCC control the selection of the person who will perform the work?

Yes___ No___

5. **Hiring, supervising, paying assistants** – Does BCC pay or otherwise control the activities of the workers who assist this person in the performance of his/her duties?

Yes___ No___

6. **Continuing relationship** – Does the arrangement with this individual establish continuing or recurring work, even if the services are seasonal, part-time or of short duration?

Yes___ No___

7. **Set hours of work** – Does BCC establish the hours of work or otherwise prevent the individual from being the “master of his/her own time”?

Yes___ No___

8. **Full-time required** – Does BCC have control over the amount of time this person spends working so as to restrict him/her from other gainful work?

Yes___ No___

9. **Doing work on BCC premises** – Does BCC have the right to designate the place the work will be performed?

Yes___ No___

- **Independent Contractor vs. Employee Worksheet Determination - (Cont.)**

10. **Order or sequence set** – Does BCC have the right to require the work be performed in a particular order or sequence?

Yes___ No___

11. **Oral or written reports** – Can the individual be required to submit regular oral or written reports to BCC which will account for his/her actions?

Yes___ No___

12. **Payment by hour, week or month** - Will this person receive payments of regular amounts at stated intervals?

Yes___ No___

13. **Payment of business and/or travel expense** – Does BCC reimburse the individual for business or travel expense?

Yes___ No___

14. **Furnishing tools and materials** – Will BCC provide the tools and materials needed to perform the work?

Yes___ No___

15. **Right to discharge** – Can the person be dismissed for failure to obey the instructions of a BCC employee?

Yes___ No___

16. **Right to terminate** – Can the person terminate the relationship with BCC without incurring any liability?

Yes___ No___

17. **Significant investment** – Does the individual have a significant investment in the facilities used and is this investment essential as well as adequate for the job?

Yes___ No___

18. **Realization of profit or loss** – Does the person have the opportunity to realize a profit or loss for the job?

Yes___ No___

19. **Working for more than one firm at a time** – Can the person make the services available to a number of persons or firms at the same time?

Yes___ No___

20. **Making the services available to the general public** – Does the person make the services available to the general public by a business directory listing, a business license, advertisements, etc.?

Yes___ No___

If after addressing the above 20 Common Law Factors established by the Internal Revenue Service you have determined the person you intend to engage can legally be an independent contractor, then please complete the Barstow Community College District Independent Contractor Agreement. This agreement must be signed by the Superintendent - President before services may be performed. The agreement must ultimately go to Board of Trustees for final approval.