



MEMORANDUM

To: District-wide Administrators and Managers

From: Jonah R. Nicholas, Vice Chancellor, Business Services

Date: March 10, 2021

Subject: Assembly Bill (AB) 5 Employment status: Employees and Independent Contractors

Effective January 1, 2020, the California legislature imposed stricter rules for classifying individuals as independent contractors. This legislation is known as Assembly Bill 5 (AB-5).

The intent of this legislation is to establish stricter tests for an employer to ensure that employees are not misclassified as independent contractors, and thereby, not receiving benefits to which employees are entitled. With the passage of AB-5, all individuals must satisfy the following three conditions (also known as the "ABC" Test) in order to be classified as an independent contractor:

- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.*
- (B) The person performs work that is outside the usual course of the hiring entity's business.*
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.*

All independent contractor agreements submitted to the District Business Services department for review and processing via Banner must be accompanied by the attached checklist and/or business license, if required. In very narrow circumstances, the ABC test can be replaced by another set of criteria but that will certainly be the exception and not the rule. In the event you believe you have a particular set of circumstances that warrants further examination Business Services will be happy to assist.

We appreciate your efforts and cooperation in ensuring the District is compliant with the new legislative requirements around independent contractors.

If you have any questions, please feel free to contact me at jnicholas@clpccd.org.

INDEPENDENT CONTRACTOR CHECKLIST

Name of Contractor: _____

Total \$ Amount of Contract: _____ FOAP: _____

Site: District LPC CC EDCE

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

Please answer the following questions:

Step	Description	Yes	No	ICA vs EE
1.	Is the Independent Contractor a government agency, an agency registered as a LLC, LLP, Corporation (C-Corp, S-Corp)			If YES: Independent Contractor Agreement If NO: Go to step 2
2.	Is the Independent Contractor engaged in an exempt occupation including, among others, lawyer, architect, engineer, private investigator, fine artists (performing artist/musicians/vocalist and single event performers), certain licensed health-care professionals, marketing (original and creative content), travel agent services, graphic design, still photographer, photojournalist, freelance writer, editor, tutoring, event vendor, interpreting services , workers providing licensed barber, esthetician or cosmetology services and others performing work under a contract for professional services with another business entity or pursuant to a subcontract in the construction industry. "Sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sports event.			If YES: Independent Contractor Agreement If NO: Go to step 3
3.	ABC test in which a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless all of the below questions answered below are yes. (A) Is the person free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact? (B) Does the person performs work that is outside the usual course of the hiring entity's business? (C) Is the person customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed?			If the answer is No to any of these questions. The person is not an Independent Contractor.

Dean/Director (signature)

(printed name)

Date: _____ District Business Services (initials): _____