



# University Corporation at Monterey Bay

100 Campus Center –Ryan Ranch Seaside, CA 93955

## Corporation’s Independent Contractor Guidelines & Questionnaire Independent Contractor OR Employee?

### Summary:

The purpose of these guidelines is to provide you the hiring manager, with a tool to determine if an individual should be classified as an Independent Contractor (IC) or as an employee.

### WHY IS THIS IMPORTANT? MISCLASSIFICATION OF WORKERS – VIOLATIONS AND PENALTIES

It is important to determine the correct classification of workers as employees or independent contractors. This distinction is significant because an incorrect determination could result in the following:

- Wage liability, including overtime;
- Benefit liability, including retirement;
- Loss of reimbursement under Federal contract and grant funds;
- Penalties for violation of State and Federal tax withholding laws;
- Penalties for violation of Federal laws pertaining to the employment of nonresident aliens (Form I-9).
- Workers' compensation and unemployment insurance coverage requirements.

In compliance with [Assembly Bill \(AB\) 5](#), which addresses the “Employment Status” of workers who claim to be Independent Contractors and not employees, a review of the “employer-employee” relationship must be completed. This view requires a detailed analysis of each situation’s unique circumstances. Because of recent changes in the law, past approval of an individual as an independent contractor should not lead to a presumption that the same classification will be made again. Convenience cannot be a determining factor for classification. It is important to understand that misclassification can result in serious financial penalties and consequences for the campus.

### IF PERSON IS A CURRENT OR FORMER CSU OR AUXILIARY EMPLOYEE DO NOT COMPLETE FORM-CONTACT CORP HR FOR FURTHER GUIDANCE.

Please complete this Independent Contractor (IC) request form signed by the appropriate administrator and email this form along with any supporting documents to [ucorp\\_independent\\_contrators@csumb.edu](mailto:ucorp_independent_contrators@csumb.edu). Please refer to attached process map for further direction and **allow 5-7 business days for determination.**

**1. PROPOSED INDEPENDENT CONTRACTOR INFORMATION**

Name: \_\_\_\_\_

(If applicable) Business Name: \_\_\_\_\_

Street address: \_\_\_\_\_ City & State: \_\_\_\_\_

Contact Information (Phone/Email): \_\_\_\_\_

Check one:  Sole Proprietorship  Partnership  Corporation  LLC  Other \_\_\_\_\_

Is the Independent Contractor Licensed?  Yes  No If Yes, list license type: \_\_\_\_\_

**2. DEPARTMENT REQUEST DETAILS**

Department: \_\_\_\_\_

Requested By (Name/Title): \_\_\_\_\_

Date Range: \_\_\_\_\_ Payment Amount Requested: \_\_\_\_\_ Charge to Department ID: \_\_\_\_\_

Charge to: (List Chatfield): \_\_\_\_\_

**3. DESCRIPTION OF SERVICES/ JUSTIFICATION**

Please provide details outlining the proposed services (or attach a copy of the proposal):

**4. ADMINISTRATOR REVIEW & AUTHORIZATION (must be signed by the appropriate administrator)**

I hereby declare that the information provided in the document is true and correct and that I have sufficient knowledge of, authority, and responsibility for the work to be performed under this contract to effectively make this certification.

Requestor Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Appropriate Administrator Name/Title: \_\_\_\_\_

Appropriate Administrator Signature: \_\_\_\_\_

**ABC (DYNAMEX) TEST TO BE COMPLETED BY HIRING MANAGER/PI. (COMPLETE ALL THREE SECTIONS).**

Under the Dynamex Test, a worker is presumed to be an employee unless the Corporation establishes each of the following requirements described in sections 1 - 3:

YES	NO	
<input type="radio"/>	<input type="radio"/>	1. Is the worker free from control and direction of the hiring agency in the performance of work?
<input type="radio"/>	<input type="radio"/>	2. Does the worker perform work that is outside the usual course of the Corporation's business?
<input type="radio"/>	<input type="radio"/>	3. Is the worker customarily engaged in independently establish trade, occupation or business of the same nature as the work performed for the hiring business? This normally means the worker will have established and promotes his/her business, is licensed, does advertising, has other clients or potential customers, etc.

If you answered **YES** to all of the questions above (1-3), then forward completed form to Corporation HR for review. If you answered **NO** to any of the questions above (1-3), then complete questions below (4-23):

<input type="radio"/>	<input type="radio"/>	4. Will the worker be required to comply with university /auxiliary provided instructions about when, where, and how to work?
<input type="radio"/>	<input type="radio"/>	5. Will the worker be provided with instructions/training by the Corporation/hiring agency regarding the particular or manner by which the work will be performed?
<input type="radio"/>	<input type="radio"/>	6. Is the work to be performed a regular part of university business/work?
<input type="radio"/>	<input type="radio"/>	7. Does your department or another department on campus have employees performing the same, or similar, functions?
<input type="radio"/>	<input type="radio"/>	8. Will the worker be required to perform the work himself or herself?
<input type="radio"/>	<input type="radio"/>	9. Will the worker be hiring or supervising university/auxiliary employees?
<input type="radio"/>	<input type="radio"/>	10. Will the worker and the Corporation have a continuing relationship, meaning that the period of service will not be performed in a finite timeframe?
<input type="radio"/>	<input type="radio"/>	11. Can the worker terminate his/her relationship without incurring a liability failure to complete the job?

YES	NO	
<input type="radio"/>	<input type="radio"/>	12. Will the worker be able to hire and pay their own assistants?
<input type="radio"/>	<input type="radio"/>	13. Does the worker offer similar services to others as part of their own business?
<input type="radio"/>	<input type="radio"/>	14. Will the worker be allowed to work concurrently for other organizations/clients while working for the university?
<input type="radio"/>	<input type="radio"/>	15. Will the worker be able to determine their own hours and priorities?
<input type="radio"/>	<input type="radio"/>	16. Will the worker be hired and paid to complete one specific job/project for the University/Auxiliary?
<input type="radio"/>	<input type="radio"/>	17. Will the worker realize a profit or loss as a result of their services?
<input type="radio"/>	<input type="radio"/>	18. Will the worker provide his/her own tools or materials?
<input type="radio"/>	<input type="radio"/>	19. Did the worker retire/separate from the CSU/CSU Auxiliary fewer than two (2) years ago?
<input type="radio"/>	<input type="radio"/>	20. Was an employee in a policy making position or an MPP?
<input type="radio"/>	<input type="radio"/>	21. Will the worker participate in the process of planning, negotiations, transaction, or any part of the decision making process?
<input type="radio"/>	<input type="radio"/>	22. Will the worker's position be funded by a CSU contract/Grant?
<input type="radio"/>	<input type="radio"/>	23. Will the worker be responsible for supervision of CSU/Auxiliary contracted employees?

**Is the proposed IC currently employed by the CSU, CSUMB, or CSU Auxiliary?**    Yes        No

**Please note:** Any CSU Staff or Faculty will be classified as an employee if doing work for the auxiliaries at CSUMB.

**Review and Evaluation of Checklist (this section is completed by the Corporation)**

Determination:                    Independent Contractor                    Employee (contact Corp HR for further guidance)

Comments/Notes:                    Honorarium (please complete **Honorarium form** and send to A/P for processing along with this form).

## **Background Check**

The [Background Check Policy HR 2017-17](#) requires background checks for independent contractors if they perform duties that would require the background checks to be conducted if performed by CSU employees. In order for an independent contractor to operate under contract with the CSU or on CSU property, the independent contractors are responsible for attesting that the appropriate background check has been completed. This includes independent contractors who are performing work subject to legal background check requirements.

HR Reviewer's \_\_\_\_\_ Date: \_\_\_\_\_  
Name

HR Reviewer's \_\_\_\_\_  
Signature