



COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

Subject: DETERMINATION OF INDEPENDENT CONTRACTOR SERVICES	Policy Number E-3	Page Number: 1 of 5
	Date Adopted: 10/22/1991	Revised Date:

BACKGROUND:

The purpose of this policy is to comply with a recent change in the Social Security Law and its applicability to the employment of independent contractors. Effective July 1, 1991, any employee of a governmental entity who is not covered by a retirement plan must be covered by Social Security. On July 1, 1991, the County of El Dorado, in absence of an acceptable retirement option, selected social security as coverage for such employees. Departments that have individuals working under contract must withhold Social Security if the contractor meets five or more of the criteria listed on the "employee/self-employed determination worksheet" - attached here as exhibit "A". In addition to withholding Social Security at a tax rate of 6.2% plus 1.45% for Medicare from the contractor's gross pay, the County will be required to contribute its 6.2% share in addition to 1.45% for Medicare for a combined total of 15.3%.

In view of the potentially significant adverse economic ramifications to the County, it is critical that an accurate determination be made as to whether an individual is in fact a "bona fide" independent contractor prior to approval of the contract. Misclassification of a contracted individual as an independent contractor could potentially subject the County to severe financial consequences, such as Social Security penalties (essentially an amount equivalent to the total withholding described above, i.e. 15.3%), retroactive to the effective date of contractual agreement. **The burden of proof that an individual is in fact an independent contractor rests on the County.**

POLICY:

It is the policy of the Board of Supervisors of the County of El Dorado that the County and its component departments, as an employer, achieve the following goals and objectives:



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1. That the employment relationship between the County and independent contractor or contract employee be clearly defined and understood by both the County/department as an employer and the individual involved;
2. The statutory requirements for withholding related to the use of independent contractors and contract employees are correctly implemented; and
3. That the utilization of independent contractors and contract employees be properly managed according to the legal requirements.

PROCEDURE:

Beginning July 1, 1991, any contract for personal services must be accompanied by a copy of the "employee/self-employed determination worksheet" completed by the requesting department head. The Purchasing Division will process a contract for consultant services, only after receiving the determination worksheet.

Upon receipt of the request, Purchasing will review the completed worksheet. If Purchasing is in agreement with the results of the worksheet, a contract will be processed. If the contractor does not meet the minimum criteria for self-employed status, the following language will be added to the contract for services:

It has been determined that the services provided under the terms of this contract may fall under Internal Revenue Services laws and requisitions requiring withholding. Social Security and other applicable federal or state income taxes shall be withheld by the County for all payments hereunder.



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If Purchasing does not agree with the initial outcome of the determination worksheet, the request will be forwarded to the Personnel Division which will consult with the Auditor to arrive at a final determination on whether withholding requirements apply. The contracting department will be notified of any changes.

Completed contracts requiring withholding will be assigned the letter "W" following the contract number, i.e. 31-001W. This letter will alert the Auditors Department that when the claim is submitted for payment, it will be processed through the payroll unit, and applicable withholding will be deducted from the payment.

A signature line for the requesting department head has been added to the determination worksheet. The department head signature serves as proof of authorization, and verification that the worksheet is accurate.

EVALUATION CRITERIA

The following critical criteria has been established to assist department heads in differentiating between a bona fide independent contractor **not** subject to Social Security withholding and a contractor that **is** subject to Social Security withholding. As a guideline or aid in this determination process, but not to be interpreted as a replacement to the original criteria provided on the determination worksheet issued by the IRS, are the following considerations in determining whether a bona fide independent contractor relationship exists.

The existence of the following elements does not indicate an employer-employee relationship:

1. An independent contractor is one who, in rendering services, exercises an independent employment or occupation and represents their employer only as to the results of their work, and not as to the means whereby it is to be



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accomplished. Simply put, the **employer has limited right of control** as to the mode of doing the work, but is contracting to receive a product (In contrast, situations where the employer directs the day-to-day manner on which the product is developed and achieved are indicative of an employer-employee relationship).

2. The individual is **customarily engaged in an independently established business**, i.e., part of a bona fide firm or outside agency which provides services to other agencies and/or the public.
3. Independent contractors are contracted to complete a specific project for compensation by project rather than by time. Independent contractors **maintain control over their own time**.
4. The existence of recognized **professional or other regulatory licenses**. For example, an attorney, architect, etc.
5. **Services** provided by an independent contractor **do not have to be rendered personally**. Contractors are hired to provide a result; therefore, they have the right to hire others to do the actual work.
6. Independent contractors should not do work that is part of the hiring organization's regular business.

The existence of the following elements may indicate an employer-employee relations:



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1. A contractor who works on the employer's premises when the work can be done elsewhere, and/or is furnished tools/materials by the employer.
2. The existence of a continuing relationship between an individual and the organization for whom the individual performs services.
3. Prior employment with the agency on the same or closely related assignment.

Each contract and the relationship created by it must be analyzed on an individual basis, taking into account all the circumstances. In the event of question, advice should be sought from Personnel or County Counsel, as deemed appropriate.

Primary Department: Personnel Department

References: Guide to Hiring Independent Contractors, by
CA Chamber of Commerce