

**SAN LUIS OBISPO COUNTY OFFICE OF EDUCATION
EMPLOYEE VERSUS INDEPENDENT CONTRACTOR
CLASSIFICATION CRITERIA**

The designation of independent contractor status is governed by the Internal Revenue Code and common law. There are significant tax penalties imposed on employers who incorrectly classify an employee as an independent contractor.

An independent contractor is an individual (or non-corporate business entity) that provides personal services to the San Luis Obispo County Office of Education ("SLOCOE") in such a manner as to be free from SLOCOE's "right" to direct and control the independent contractor's performance. As a general rule, an independent contractor will have a principal place of business other than at the SLOCOE, have a business license, and will offer his or her services to the general public.

Individuals who are currently or formerly (during the preceding 12 month period) employed by SLOCOE may not provide services to SLOCOE as an independent contractor.

Individuals will be classified as an employee if the answer to any of the following three questions is "yes."

1. Does the individual currently work for the SLOCOE as an employee?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Does SLOCOE expect to hire this individual as an employee to provide the same or similar services immediately following the termination of his or her independent contractor services?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Did the individual have an official appointment (including hourly or temporary) to provide the same or similar services during the 12 month period prior to the date on which the independent contractor's services commenced?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Individuals will be classified as a contractor if the answer to ALL of the following three questions is "yes."

[Dynamex Operations West v. The Superior Court of Los Angeles County]

A. The worker is free (contractually and in fact) from the control and direction of the hirer in connection with the work, <i>AND</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. The worker performs work that is not the hiring entity's usual business, <i>AND</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.	<input type="checkbox"/> Yes <input type="checkbox"/> No

The Internal Revenue Service uses the following criteria to classify individuals as either independent contractors or employees. While there is no single criterion (or group of criteria) that will provide a definitive determination, the following criteria, when used in combination, provide an overall indication of how the individual should be classified. **A "yes" response to the questions tends to either strengthen or weaken the case that the individual is an independent contractor.**

Weakens	Strengthens	BEHAVIORAL CONTROL	
✓		1. Does SLOCOE have the right to tell the worker when, where and how work is to be performed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		2. Does SLOCOE have the right to determine the sequence, details, or means of work performed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		3. Are work hours set by SLOCOE?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		4. Does SLOCOE require services to be rendered personally?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		5. Does SLOCOE dictate which workers should be used or hired to complete the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		6. Does SLOCOE train the worker to perform the service?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		7. Does SLOCOE have the right to fine or discipline the worker if instructions are not followed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		8. Does SLOCOE have responsibility for hiring, firing, supervising, or paying assistants of the worker?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		9. Is the worker required to provide oral or written reports to SLOCOE periodically?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		10. Does SLOCOE provide tools and materials necessary to perform the service?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		11. Does SLOCOE tell the worker where to purchase supplies and service?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		12. Does SLOCOE have the right to terminate the relationship with the worker?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Weakens	Strengthens	FINANCIAL CONTROL	
✓		1. Is compensation made on a regularly recurring basis (e.g. weekly, monthly, or on retainer)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	2. Does the worker have a direct interest in or share of any profit or loss of the work accomplished?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	3. Does the worker have a significant investment in facilities or materials (other than computer equipment and education)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	4. Does the worker incur unreimbursed business expenses in connection with the project?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	5. Does the worker have a business license to perform the services provided to SLOCOE?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	6. Are the worker's services available to the general public?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	7. Does the worker perform similar services for more than one firm at a time?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Weakens	Strengthens	RELATIONSHIP OF THE PARTIES	
	✓	1. Is there a written contract between the worker and SLOCOE describing the workers as an independent contractor?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	✓	2. Do SLOCOE and the worker intend for the worker to serve as an independent contractor?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		3. Is there a continuing relationship between the worker and SLOCOE?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		4. Does the worker devote full time to the business of SLOCOE?	<input type="checkbox"/> Yes <input type="checkbox"/> No
✓		5. Does the worker expect to receive employee benefits from SLOCOE?	<input type="checkbox"/> Yes <input type="checkbox"/> No

The following are illustrative examples from the Massachusetts Attorney General:

- A motor vehicle appraisal company cannot classify an appraiser as an independent contractor because the appraiser is performing an essential part of the appraisal company's business.
- A drywall company cannot classify an individual who is installing drywall as an independent contractor because that worker is performing an essential part of the business.
- Conversely, an accounting firm hires an individual to move office furniture. The individual may be classified as an independent contractor because moving furniture is incidental and not necessary to the accounting firm's business.