

# Southern California Institute for Research & Education

Mail Code 09-151  
5901 East Seventh Street  
Long Beach CA 90822

**To:** PIs wanting to use Consultants for SCIRE projects

**From:** Executive Director

**Subject:** Consultant vs. Employee Status

SCIRE could be heavily fined by the IRS for hiring as Consultants staff that should rightfully be designated as Employees. All Investigators with Consultants on board should be advised to review and complete the attached questionnaire. If the P.I. still feels that the designation of "Consultant" is accurate, he/she should sign a statement to the effect that he/she is aware that **any IRS fines received because of inaccuracies on the questionnaire will be assigned the P.I.**

With this in mind, please review the questionnaire (one for each Consultant) and return it to the SCIRE Office for their records.

**We will not question the P.I.'s response to the questionnaire.** We want working with SCIRE to be pleasant; however, SCIRE must remain "legal" to retain its nonprofit status with the IRS.

Your cooperation will be greatly appreciated.

S. Lea Lowe

Attachment(s):  
Questionnaire Form for each Individual

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## REQUEST TO ENGAGE A CONSULTANT

**This form must be submitted prior to making a commitment.**

Name of Consultant: \_\_\_\_\_

Name of Principal Investigator: \_\_\_\_\_ Budget #: \_\_\_\_\_

Services to be performed: \_\_\_\_\_  
\_\_\_\_\_

Estimated dates of service: \_\_\_\_\_ to \_\_\_\_\_

### **Section 1 -- To be completed by Principal Investigator**

I understand that a Consultant is treated differently than an employee. There will be no training or supervision, no set work hours, no ability to fire at will, and no rules, reports or deadlines unless stated in their contract.

This consultant: (You must check one)

- Is a Federal employee
- Is on WOC (Without Compensation) status with the VA.
- Will not be working on VA grounds. If so, where? \_\_\_\_\_

\_\_\_\_\_  
SCIRE Investigator Signature

\_\_\_\_\_  
Date

### **Section 2 -- To be completed by Consultant**

I understand that as a self-employed individual:

- I am responsible for paying my own State and Federal taxes (none will be withheld).
- I am not covered by Workers Compensation Insurance, State Disability Insurance, Unemployment Insurance or Health Insurance.
- I am not eligible for holiday, sick, vacation or jury duty pay; nor retirement or any other benefits.
- Before beginning work I am prepared to read and sign the Drug Free Workplace and the Standards of Ethical Conduct forms.

\_\_\_\_\_  
Signature of Consultant

\_\_\_\_\_  
Date

## EMPLOYEE OR CONTRACTOR?

Following are some guidelines that might be helpful in determining whether someone is an employee or an independent contractor. The most important factor which affects a worker's legal status is how you treat that worker. Hiring firms must give up control over their independent contractors. In one court case it was decided that the most important factor used in determination is the right of the worker to control the manner and means of accomplishing the desired result. It also stated that the parties' belief regarding the worker's status is relevant to determination.

The more questions from the column on the left that are answered "yes", the more likely that the worker is an employee.

Is the person required to follow company instructions or procedures to accomplish the job?

A worker who usually performs without supervision is more likely an independent contractor.

Is the worker required to perform work on the company's premises, under the company's direction or supervision?

A worker who performs a job over a short period of time is more likely an independent contractor.

Is the worker engaged for an indefinite period of time?

A worker paid a contract or per-job fee rather than an hourly wage is more likely an independent contractor.

Is the worker required to work certain hours determined by the company?

A worker who performs work that is not a normal part of the principal's business is more likely an independent contractor.

Is the worker eligible for a bonus, paid vacations or sick pay?

A worker who provides his/her own tools is more likely an independent contractor.

Does the worker furnish a time record to the firm?

A worker who has a unique and distinct occupation is more likely an independent contractor.

Is the service being provided essential to the company's success?

A worker who possesses a unique and special skill is more likely an independent contractor.

Is the worker given training by the firm?

Does the company provide the materials, supplies, computer, software, office space and other tools to accomplish the work?

Is it understood that the worker will personally perform the services (will not engage an assistant)?

Is the worker performing service exclusively for the company?

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## Independent Contractor Assessment

- 1. **No Instruction:**  
The contractor will not be required to follow, nor will he/she be furnished instructions to accomplish the job. The hiring firm may provide job specifications.
- 2. **No Training:**  
The contractor will not receive training by the hiring firm. He/she will use his/her own methods to accomplish the work.
- 3. **Services don't have to be Rendered Personally:**  
The contractor is being hired to provide a result and will have the right to hire others to do the actual work.
- 4. **Work is not Essential to the Hiring Firm:**  
The hiring firm's success or continuation does not depend on the services of outside contractors.
- 5. **Own Work Hours:**  
The contractor will set his/her own work hours.
- 6. **Not a Continuing Relationship:**  
The contractor won't have a continuing relationship with the hiring firm. If the relationship is frequent, it will be irregular intervals, on call (not full-time), or whenever work is available.

**Warning:** Part-time, seasonal, or short duration relationships have nothing to do with independent contractor status

- 7. **Control their own Assistants:**  
If assistants are hired, it will be at the contractor's sole discretion. The contractor will be responsible for hiring, supervising and paying those assistants.
- 8. **Time to Pursue Other Work:**  
The contractor will have time to pursue other gainful work.
- 9. **Job Location:**  
The contractor will control where he/she works. If he/she works on the hiring firm's premises, the hiring firm will not direct or supervise him/her.
- 10. **Order of Work Set:**  
The contractor will determine the order and sequence that he/she will perform his/her work.
- 11. **No Interim Reports:**  
Since the contractor is being hired for the final result, he/she will not be asked for progress or interim reports.

12. **Payment Timing:**  
The contractor will be paid by the job, not by time. Payment by the job can include periodic payments based on a percentage of the completed job. Payment can be based on the number of hours needed to do the job times a fixed hourly rate. However, this will be set in advance of the job.
13. **Working for Multiple Firms:**  
The contractor will work for more than one firm at a time.
14. **Business Expenses:**  
The contractor will be responsible for his/her incidental expenses.
15. **Own Tools:**  
The contractor will furnish his/her own tools. If the hiring firm leases equipment to the contractor, the terms will be equivalent to what an independent business person could have obtained in the open market. *For more information, contact a labor attorney.*
16. **Significant Investment:**  
The contractor can perform his/her services without the hiring company's facilities (equipment, office furniture, machinery, etc.) The contractor's investment in his/her trade is real, essential, and adequate.
17. **Services Available to General Public:**  
The contractor makes his/her services available to the general public by (check one or more):
- \_\_\_\_\_ Having an office and assistants      \_\_\_\_\_ Having business signs
- \_\_\_\_\_ Having a business license      \_\_\_\_\_ Advertising his/her services
- \_\_\_\_\_ Listing his/her services in a business directory
18. **Possible Profit or Loss:**  
The contractor can make a profit or a loss (check one or more):
- \_\_\_\_\_ Hires, directs, and pays assistants.
- \_\_\_\_\_ Has own office, equipment, materials or facilities.
- \_\_\_\_\_ Has continuing and reoccurring liabilities.
- \_\_\_\_\_ The contractor's services affect his/her own business reputation.
- \_\_\_\_\_ The contractor has agreed to perform specific jobs for prices agreed upon in advance.
19. **Limited Right to Discharge:**  
The contractor can't be fired so long as he/she produces a result, which meets the contract specifications.
20. **No compensation for Non-Completion:**  
The contractor is responsible for the satisfactory completion of the job and is legally obligated to compensate the hiring firm for failure to complete.

**Conclusions from evaluating the 20 Common Law Factors**

**Strengths**

(areas which support independent contractor status)

**Weaknesses**

(areas which support employee status)

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Based on my replies to this questionnaire, my request for \_\_\_\_\_  
to be a consultant is accurate. I will assume any fines imposed by the IRS and any other associated costs  
if this designation is determined to be inaccurate.

\_\_\_\_\_  
Principal Investigator's Name

\_\_\_\_\_  
Principal Investigator's Signature

\_\_\_\_\_  
Date

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**PAYMENT FOR SERVICES/CONSULTING**

Date: \_\_\_\_\_

Payment to: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Social Security: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ (W-9 Submitted)

requested for the following services performed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please attach the Consultant's invoice to this form.

Number of Hours Worked: \_\_\_\_\_ @ \$ \_\_\_\_\_ = \$ \_\_\_\_\_  
**Hourly Rate** **Total Payment**

Dates of Service: \_\_\_\_\_ to: \_\_\_\_\_

- Please mail check to above address
- Please hold check for pick up

\_\_\_\_\_  
SCIRE Investigator's Signature

\_\_\_\_\_  
BUDGET NUMBER