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## **Appropriate Classification of Independent Contractors Guidance for the Review Process**

It is important to classify workers correctly for employee benefits, retirement benefits, payroll taxes, wage and hour laws, discrimination laws, etc. Consistent with these laws, King County agencies review the use of independent contractors to ensure they are appropriately classified.

### **What are Independent Contractors?**

Generally, an individual performing services for the County is an independent contractor if the County agency has the right to control or direct only the result of the labor or services and not the means and methods accomplishing the labor or services.

An independent contractor is a worker who is not a County employee but enters into a contract with the County to provide labor or services that County workers do not provide.

### **What Does this Policy Cover?**

- Policy Overview
- Applicable definitions
- Six-factor test to determine if a worker is appropriately classified as an independent contractor
- FAQs
- Independent Contractor Review Form
- Video: Overview of Independent Contractors from County Experts
- Video: County Experts Review of Six-Factor Test

### **Who Should Read this Policy?**

- Personnel who procure workers for services
- Managers and supervisors who staff operations
- Human resources personnel



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## Policy Overview

The County procures contracts with temporary employment agencies which supply the County with contract workers who work on a temporary and as-needed basis. The County also hires temporary employees (short-term temporary and term-limited temporary) who work on a temporary and as-needed basis. Additionally, the County procures service contracts to secure specific deliverables by independent contractors. The County's Career Service Review Committee (CSRC) oversees the use of agency contract workers, temporary employees, and independent contractors to ensure that they are appropriately classified and utilized.

Independent contractors are different from other workers. Generally, a worker is an independent contractor if the County has the right to control or direct only the result of the labor or services and not the means and methods to accomplish the labor or services. The pivotal question is whether the worker is economically dependent upon the County as an employer or is really in business for himself or herself.

A factor-based analysis is necessary to determine whether an individual qualifies as an independent contractor. In cases where the use of an independent contractor may not be appropriate, the secondary analysis is whether the work should be performed by:

- A contract worker;
- A short-term temporary employee;
- A term-limited temporary employee; or
- A regular King County employee.

This policy and corresponding procedures do not apply to work needed in relation to Public Works, Small Works Roster, Limited Public Works Roster, or Work Order Contracts. For more information on these contracts, please contact Finance and Business Operations, [Procurement and Contract Services](#).



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## DRS Verification

The State of Washington Department of Retirement Systems (DRS) requires King County to **verify the retirement status of any independent contractor we directly compensate**. Even if they are paid through AP. We are not required to verify the status of vendor companies, including their employees and subcontractors who we hire through our normal bidding process. But we are required to verify any individual contributor. [Download this form](#). Use the following scenarios to help determine which steps should be taken to comply with the requirements:

1. You hire Sam Smith under a personal services contract to provide a one day training class to your employees. Sam Smith is paid directly for his services. Complete a Contractor Status form for Sam Smith.
2. You hire John Jones as an independent contractor to provide assistance in developing a new computer system for your office. John's business is Jones Computer Services. Although John has a business license and name it doesn't exempt him from the return-to-work limitations if he retired using the 2008 Early Retirement Factors (ERFs). John is directly compensated for his services and can't use a business name to avoid the work limitations. Complete a Contractor Status form.
3. Through your bidding process, you hire ABC Landscaping to maintain your grounds. This company has 15 employees. You do not need to complete Contractor Status forms for this company or its employees.
4. You hire XYZ Computers to replace all of your computer equipment. It's a large company with more than 1,500 employees. You do not need to complete Contractor Status forms for this company or its employees.

Once you fill out the name and Social Security Number on the form email it to [kc.retirement@kingcounty.gov](mailto:kc.retirement@kingcounty.gov).

A member of the retirement team will verify the status using the states verification system and email you with the outcome.





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## Definitions

For the purposes of this policy, the following definitions apply:

**Career Service Employee.** A County employee appointed to a career service position as a result of the selection procedure provided for in KCC Chapter 3.12, and who has completed the probationary period.

**Career Service Review Committee (CSRC).** As set forth under the King County Code, the CSRC shall consist of the following three permanent members: the county executive or his or her designee; the chief officer of the office performance strategy and budget or successor organizational unit, or his or her designee; and the director of the Human Resources Division or successor organizational unit; and one member representing the department whose body of work and/or employees are then under review.

**Contract Worker.** The King County Procurement Office establishes contracts with employment agencies for the provision of contract workers which are administered by the Human Resources Division. Workers hired under these contracts furnish temporary personnel support on a short-term basis, as requested by King County agencies. The duration of assignments to fill these vacancies may range from one day to approximately six months. Contract workers are limited to working no more than 1040 hours in any rolling 12-month period, regardless of changes in assignments or agencies.

**County Employee.** Any person who is employed in a career service position, or exempt position.

**Independent Contractor.** Generally, an individual performing services for the County is an independent contractor if the County agency has the right to control or direct only the result of the labor or services and not the means and methods accomplishing the labor or services. The pivotal question is whether the worker is economically dependent upon the County as an employer or is really in business for himself or herself.

**Services.** The furnishing of labor, time, or effort by a contractor, not involving the delivery of tangible personal property, other than reports which are merely incidental to the required performance (except for professional or technical services).

Additional definitions applicable to personnel management may be found in the [Personnel Guidelines](#).



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## Six-Factor Test: To Determine if a Worker is Appropriately Categorized as an Independent Contractor

No set number of factors necessarily establishes whether or not the worker is an independent contractor and all factors must be considered when doing the analysis. The key is to analyze the entire relationship and the primary consideration is whether the County has the right to control or direct only the result of the labor or services and not the manner or means by which the service is delivered. The pivotal question is whether the worker is economically dependent upon the County as an employer or is really in business for himself or herself.

To assist in making the determination of whether the relationship is that of an independent contractor or employee, the agency may complete the "Independent Contractor - Review Form" (attached as an icon at the end of this bulletin).

The following six factors, as set forth in the form, are used as an initial threshold to determine whether the criteria for an independent contractor are met. Your responses to these six questions will help you to determine whether further review is required:

*All questions must be answered with a "yes" or "no" response.*

**1. Is the contract one in which workers of some kind are involved?**

If the contract is for *goods alone* and no services are being requested, the answer to this question is "no". If, instead, workers will be performing work to complete the contract, the answer to this question is "yes."

**2. Does the contract provide that workers will perform the same or similar duties which are performed by King County employees? If yes, what kind(s) of King County classifications perform the work?**

Analyze whether or not the service is to be performed outside of the normal service performed by the agency. Usually a worker who performs the same job functions as performed by employees of the County is not an independent contractor. If the contract calls for work which the County does not normally perform and which the worker has control over performing, then the worker is more likely an independent contractor.





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### Six-Factor Test continued

**3. Does the individual or entity file tax returns with the IRS with a social security number?**

Look at whether the tax identification number used for the contract is the individual's social security number – this may distinguish a company performing work from an individual person performing work. Often, use of the individual's social security number as the tax identification number indicates that the work may be performed personally by an individual. Instead, if the vendor is a business entity with a tax identification number and not an individual, it would indicate this may be a service contract.

**4. Does the individual or entity performing the service NOT have an account with Washington's Department of revenue?**

If the vendor is a business entity, it will likely have such an account as a business has a state business license and you will want to have the license number. You will need to ask the prospective contractor for this information.

**5. "Does the individual or entity performing the service rely on the County to maintain records about the work?"**

You will need to ask the prospective contractor for this information.

**6. Is totality of the work worth \$25,000 or more (the total value of the annual contract should be used, not just the total for one invoice or project) over the course of a project?**

If you answered "no" to questions No. 1 or No. 6, then the worker is likely an independent contractor.

Generally, if you answered "yes" to three or less of these six questions, there may not be an employee relationship and the agency can proceed with contracting through the Finance and Business Operations Division, Procurement and Contract Services Section. If you answered "yes" to four or more of these six questions, contact your department Human Resources Service Delivery Manager.

Upon review, if it appears that an employee, and not an independent contractor, relationship exists, please contact the County's Human Resources Division for further assistance in making a determination. Please contact the County's Human Resources Division with any questions about this policy or specific application.

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**Q1. What are examples of workers who might be mistakenly classified as independent contractors but should really be classified as County employees?**

A. Former employees performing services which were similar to those performed while they were employees; workers who perform the same kind of work as performed by County employees; workers whose work details are controlled by the County.

**Q2. What happens if an independent contractor is performing services for the County, but should have been hired as an employee?**

A. Most importantly, that is not fair to the worker. In addition, one of the largest growing areas of wage and hour litigation in the United States involves disputes over the classification of workers as independent contractors when they should have been classified and hired as employees. Coupled with Washington State's strong policy in favor of employee rights, there would be potential liability to the County.

The County may owe federal and state taxes and wages and overtime. There are also liabilities regarding employee benefits, retirement benefits, payroll taxes, wage and hour laws, discrimination laws, etc. Successful litigants may also receive attorney's fees and litigation costs. This is why it is important to classify work appropriately at the outset.

**Q3. What is a good way to determine if a worker may be hired as an independent contractor instead of an employee?**

A. Use the Six-Factor Test provided in this policy as an initial analysis. If you have concerns, contact the County's Human Resources Division for consultation.

**Q4. If we do want to procure an independent contractor, how do we do that?**

A. For assistance with the process, contact the County's Finance and Business Operations, [Procurement and Contract Services](#).



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Independent Contractor  
Review Form



### Videos:

- Overview of Independent Contractors from County Experts (top - approx. 8 min.)
- County Experts Comment on the Six-Factor Test (bottom - approx. 5 min.)

*These videos feature*

**Marjory Mathews-Hellman**, Manager, Contract, Procurement and Real Estate Services, Public Health - Seattle & King County and

**Roy Dodman**, Procurement Supervisor, Finance & Business Operations, Department of Executive Services

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Print version of Appropriate Classification of Independent Contractors Guidance for the Review Process

## Overview of Independent Contractors from County Experts



## County Experts Comment on the Six-Factor Test

