
Proper Utilization of Independent Contractors

- I. **Purpose.** To establish clear guidelines for the utilization of independent contractors within City government operations, ensuring compliance with California Assembly Bill 5 (AB 5) and other applicable laws. This policy aims to minimize legal risks, uphold labor standards, and ensure that contracting practices align with the City's operational needs.
- II. **Scope.** This policy applies to all City departments, agencies, and officials engaging independent contractors for services. It outlines the criteria for classifying individuals as independent contractors and the processes for ensuring compliance with AB 5.
- III. **Background.** An independent contractor is a person or entity engaged to perform services under a contract for a specific project or task who is not considered an employee under applicable labor laws. AB 5 (enacted in 2019; effective January 1, 2020) codified the "ABC" test for determining independent contractor status. (Lab. Code § 2750.3.)

The ABC test provides that an individual providing labor or services for compensation is an employee rather than an independent contractor unless the hiring entity satisfies each of the following three (3) conditions: (1) the individual is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract terms and in fact; (2) the individual performs work that is outside the usual course of the hiring entity's business; and (3) the individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. (Lab. Code § 2750.3.)

- IV. **Policy Statement.** The City is committed to using independent contractors in a manner consistent with legal standards, including the "ABC test" introduced by AB 5, to determine contractor classification. Misclassification of employees as independent contractors is strictly prohibited. The City's guidelines for the proper utilization of independent contractors are as follows:
 - a. **Pre-Hiring Assessment** – Before engaging an independent contractor, the hiring department must:
 - i. Conduct an evaluation using the ABC test.
 - ii. Ensure that the scope of work is project-based, temporary, or specialized and does not align with the core functions of the City.
 - iii. Confirm that the individual or entity holds any required business licenses, certifications, or insurance.

- b. **Contractual Requirements** – All agreements with independent contractors must:
 - i. Be in writing and include a clear description of the services to be performed, timelines, and payment terms.
 - ii. Explicitly state that the contractor is not an employee and is responsible for all applicable taxes, benefits, and insurance coverage.
- c. **Exemptions** – AB 5 provides exemptions for certain professions and business relationships (e.g., licensed professionals, business-to-business contracts, and others). For exempt relationships, the appropriate multi-factor Borello test will be used for classification. Departments must consult legal counsel to ensure proper application of exemptions.
- d. **Monitoring and Compliance**
 - i. Departments must regularly review contractor arrangements to ensure ongoing compliance with AB 5 and related labor laws.
 - ii. The City will periodically review independent contractor agreements to ensure compliance with this policy and state laws. Noncompliance may result in corrective actions, up to and including termination of contracts and disciplinary action for involved staff.
- e. **Prohibited Practices**
 - i. Misclassifying employees as independent contractors to avoid employment obligations such as wages, benefits, and taxes.
 - ii. Engaging independent contractors to perform tasks that are integral to the City's primary operations, unless exempt under AB 5.

V. Responsibilities

- a. **Human Resources Department:** Provide guidance to departments on worker classification and AB 5 compliance.
- b. **Department Heads:** Ensure adherence to this policy when engaging independent contractors and provide accurate information in classification justifications.
- c. **Legal Counsel:** Review contracts and provide advice on compliance with AB 5 and related labor laws.