

CONSULTANTS

The Monterey County Board of Education (County Board) understands that the Monterey County Superintendent of Schools (County Superintendent) authorizes the use of consultants to provide expert professional advice or specialized technical or training services which are not needed on a continuing basis and which cannot be provided by Monterey County Office of Education (MCOE) staff because of limitations of time, experience or knowledge. Individuals, firms or organizations employed as consultants may assist management with decisions and/or project development related to financial, economic, accounting, engineering, legal, administrative, instructional or other matters.

As part of the contract process, the County Superintendent or designee should determine, in accordance with Internal Revenue Service guidelines, that the consultant is properly classified as an independent contractor. MCOE employees who perform extra-duty consultant services shall not be retained as independent contractors. They shall be considered employees for all purposes, even if the additional services are not related to their regular duties.

A person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the MCOE is able to demonstrate that all of the following conditions have been met: [Labor Code (LC) 2775]

1. The person is free from the control and direction of MCOE in connection with the performance of the work.
2. The person is performing work that is outside the usual course of MCOE providing educational services.
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed.

The determination of whether an individual acting as a sole proprietor or a firm or other business organization is an independent contractor shall be made in accordance with LC 2775-2785, as applicable.

All qualified independent contractors shall be accorded equal opportunity for contracts regardless of actual or perceived race, ethnicity, color, national origin, ancestry, age, religion, creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military status, sex, sexual orientation, gender, gender identity, gender expression, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. [Education Code 220; Government Code (GC) 12940]

Any consultant hired by MCOE who is subject to the filing requirements listed in MCOE's conflict of interest code, shall file a Statement of Economic Interests within the time period required by law. [GC 87302]

Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests. However, the County Superintendent or designee may determine in writing that a consultant's duties are of limited scope, and therefore, the consultant is not required to fully comply with the disclosure requirements.

If the County Superintendent enters into a consultant contract for \$25,000 or more, and the contract exceeds the current budgetary appropriation and requires a budget revision, the cost shall be incorporated in the next interim financial report or other report to the County Board for discussion and approval at a regularly scheduled meeting of the County Board.

The County Board prohibits the harassment of an independent contractor by any MCOE employee or by any other person with whom the independent contractor comes in contact during the course of employment with MCOE. Additionally, the County Board prohibits the harassment of a MCOE employee by an independent contractor. Any complaint of harassment shall be investigated and resolved in accordance with applicable MCOE complaint procedures. (Government Code 12940)

Legal Reference:

Court Decision

S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341

Court Decision

Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal. 5th 903

2 CCR 18700-18760

Conflicts of Interest

Ed. Code 10400-10407

Cooperative improvement programs

Ed. Code 17596

Limit on continuing contracts

Ed. Code 220

Prohibition of discrimination

Ed. Code 35010

Control of district; prescription and enforcement of rules

Ed. Code 35172

Promotional activities

Ed. Code 35204

Contract with attorney in private practice

Ed. Code 44925

Part-time readers employed as independent contractors

Ed. Code 45103

Classified service in districts not incorporating the merit system

Ed. Code 45103.5

Contracts for management consulting services; restrictions

Ed. Code 45134-45135

Employment of retired classified employee

Ed. Code 45256

Merit system districts; classified service; positions established for professional experts on a temporary basis

Gov. Code 12940-12952

Unlawful employment practices

Gov. Code 53060

Special services and advice

Gov. Code 82019

Definition, designated employee

Gov. Code 87300-87313

Conflict of interest code

Lab. Code 2750.3

ABC three-part test: employees and independent contractors

Unemp. Ins. Code 606.5

Determination of employment status

Unemp. Ins. Code 621

Employer and employee defined

Adopted: 04/82

Revised: 08/87; 1996; 1999; 04/10/19, 03/16/22