

## Discussion for DBUG 8/26/2016:

1. Critical to Correctly Classify Individuals when you Hire:
  - a. If audited by either EDD or the IRS and it is determined an incorrect classification, employer may be held liable for employment taxes for that employee
    - i. There may be penalties
    - ii. File 941-X and a W2-C
2. Employee vs Independent Contractor
  - a. Common Law Employment Rules Fall into 3 Categories:
    - Behavioral
    - Financial
    - Type of Relationship

In summary, and the best test, to determine if an individual is an employee is if the employer can control what will be done and how it will be done, even if the employee is given freedom of action. What matters is that you have the right to control the details of how the services are performed (even if you never exercise the control). *Employees are subject to payroll taxes*

- b. Independent Contractor per IRS:

The general rule for determining an independent contractor is if the employer has the right to control or direct only the result of the work and not what will be done and how it will be done. *Independent contractors are subject to self-employment tax.*

- c. When its grey, look at secondary factors:
        - i. EDD's Employment Determination Guide (Forms DE38 and/or DE1870)
        - ii. Can take 4-6 weeks to get a determination
        - iii. IRS's Determination of Worker Status for Purposes of Fed Employment Taxes and Income Tax Withholding (Form SS-8)
        - iv. Can take up to 6 months to get a determination

3. CalSTRS Retirees Working as Independent Contractor:
  - a. CalSTRS retirees are subject to the earnings limit that includes earnings paid to the retiree as an independent contractor (see employer directive 2016-03 for Postretirement Earnings Limitations and Restrictions)
  - b. When contracts for professional services are submitted:
    - i. Look-up membership status in CalSTRS SEW
    - ii. Complete SCOE's CalSTRS Retiree Earnings Paid Through Accounts Payable form and send it, along with a copy of invoices, to SCOE's retirement desk (Carol Mahan)
      1. The invoice amount(s) will be included on the next CalSTRS retirement report
    - iii. Complete CalSTRS Form ES-732 Employer Certification of Independent Contractor Status and retain in Employee's File
4. Foreign Vendors Providing Service in US (contact Erin in Business Services for details)
  - a. Special Forms to be completed by vendor:
    - i. i.e. W-8 instead of a W-9
  - b. Possible Federal with holding at 30% and State with holding @ 7%
  - c. Special filing completed by employer (instead of a 1099, a 1042)
  - d. Federal deposits require EFTPS (Electronic Federal Tax Payment System)
  - e. State payments do not require depositing electronically