

LRC Research Training

Contract Drafting Spring 2023

Liz Parker Publication Services Librarian (619) 260-7986 eparker-10@sandiego.edu

What we will cover today



- Finding sample contracts and drafting guidance
 - Bloomberg Law
 - Lexis Practical Guidance
 - Thomson Reuters (Westlaw) Practical Law
 - CEB OnLaw Pro
- Finding books and treatises on contract law

Finding sample contracts & guidance



Your client—a local cleaning company—is planning to offer on-demand disinfecting services via a new mobile app. To that end, they've identified a software developer they'd like to hire as an independent contractor to write the program. They've asked you to draft the terms of this agreement.

You've never written such a contract before and don't know how to get started.

Where to begin?

Finding sample contracts & guidance



A common scenario:

- You are asked to draft a brand-new contract or clause
- You have never written a contract like the one you have been asked to draft
- You might be tempted:



You get what you pay for



Fee-based sources of forms/sample contracts and guidance

- Bloomberg Law (forms & analysis)
- Lexis Practical Guidance (forms & analysis)
- Thomson Reuters (Westlaw) —
 Practical Law (forms & analysis)
- CEB OnLaw Pro (CA-specific; forms & analysis)
- Other fee-based legal websites (often include forms only)

Quality free sources

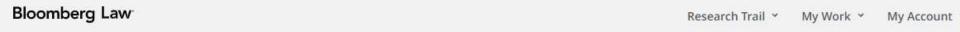
- State websites have free forms (but no analysis)
- Print books at the LRC (and other law libraries) have forms and analysis

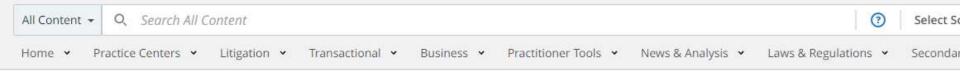
Issues to think about

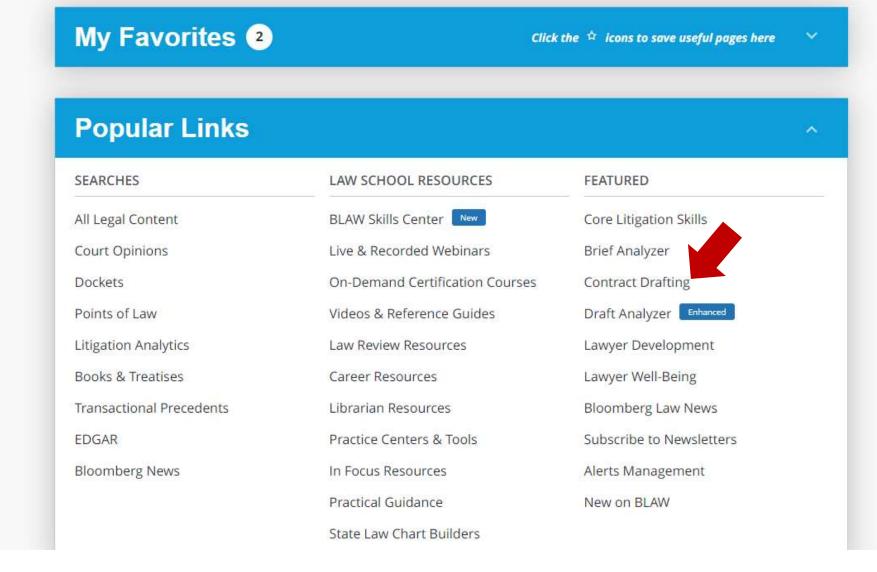
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In Focus: Contract Drafting



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M&A Sample Agreements



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Health Care Sample Agreements

Health Forms & Sample Documents

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Employment

Employment Sample Agreements



Employment Forms & Letters

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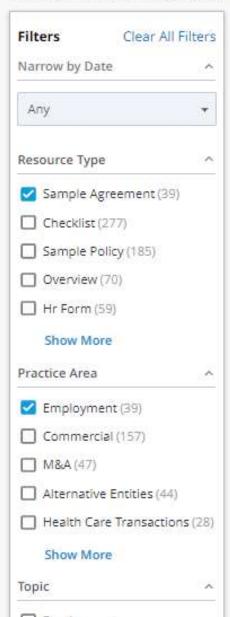


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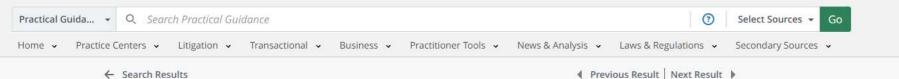
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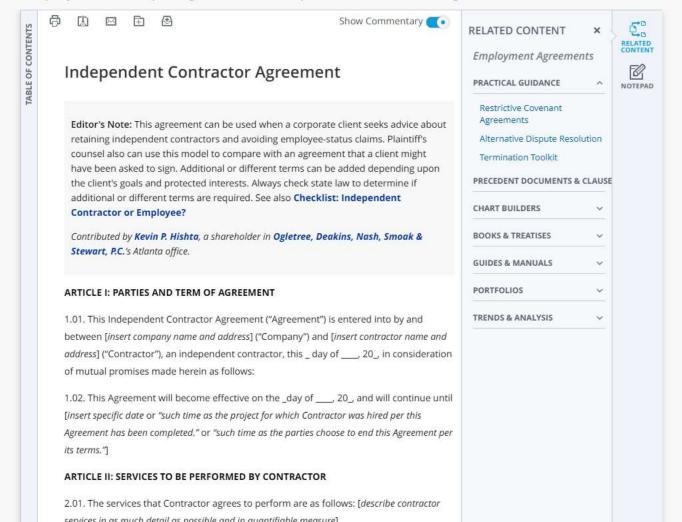
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3. Employment, Sample Agreement - A	greement to Mediate
4. Employment, Sample Agreement - El	EOC Consent Decree
5. Employment, Sample Agreement - N	egotiated Settlement Agreement
6. Employment, Sample Agreement - Se Not to Sue	ettlement Agreement, General Release, and Covenant
7. Employment, Sample Agreement - La	ast Chance Agreement (Short Form)
8. Employment, Sample Agreement - La	ast Chance Agreement (Long Form)
9. Employment, Sample Agreement - In	adependent Contractor Agreement



PRACTICAL GUIDANCE

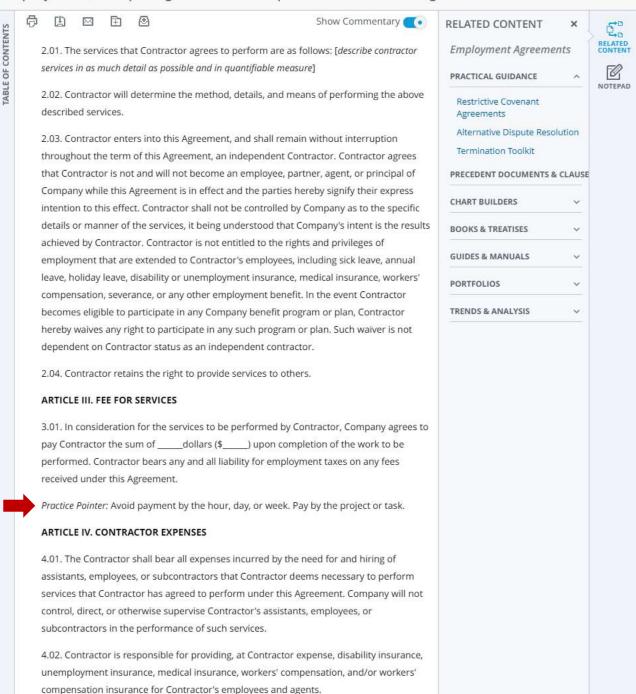
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Employment, Sample Agreement - Independent Contractor Agreement



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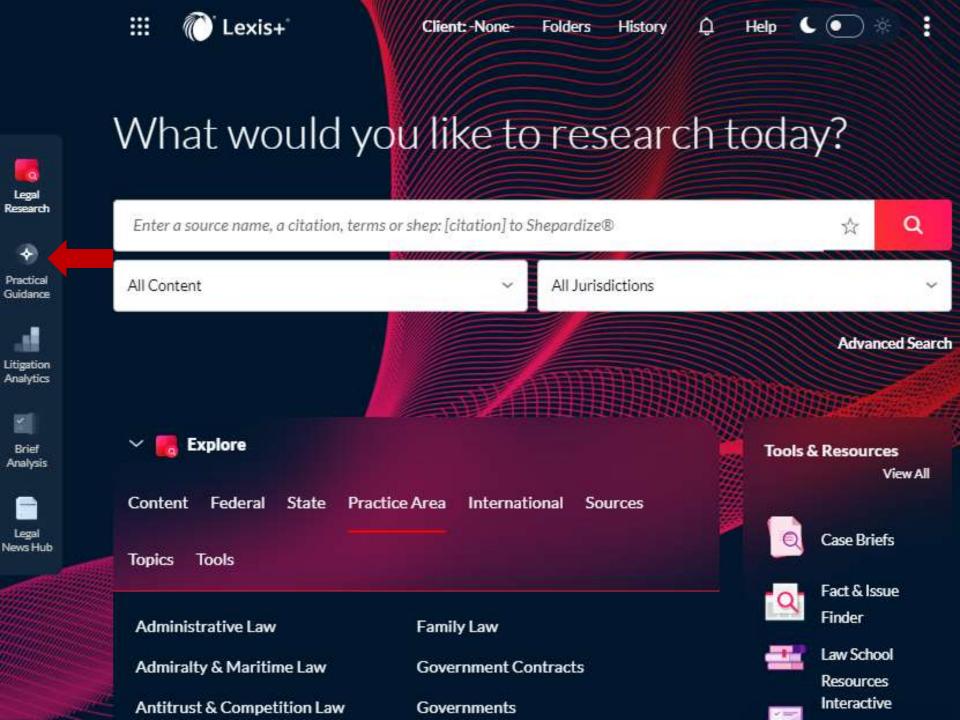
Employment, Sample Agreement - Independent Contractor Agreement







LEXIS PRACTICAL GUIDANCE





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Legal Research



Practical Guidance







News Hub

What task would you like to accomplish today?

independent contractor agreement

Independent Contractor Agreement Drafting Checklist

Independent Contractor Agreements: Major Negotiation, Drafting, and Legal Issues

Legal Phrases independent contractor agreement

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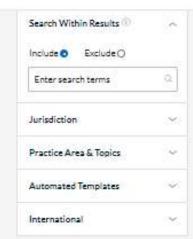
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Results for: independent contractor agreement Natural Language - /









10 Independent Contractor Agreement (Pro-service Recipient)

Template Automated Template () Non-jurisdictional

Independent Contractor Agreement (Pro-service Recipient) This form is an Independent contractor agreement between an Independent contractor and the party for whom the Independent contractor will perform specified services (the client). This template contains practical guidance

- ... or customize it for one or more jurisdictions. The terms "Contractor" and "Client" are used to help avoid the parties' relationship ...
- ... determination of whether a worker is characterized as an employee or Independent contractor hinges on control. The more a Client controls a Contractor, the more likely an employee/employer relationship exists instead of a client/Independent contractor relationship. The
- determination of whether a worker is properly classified as an employee or an Independent contractor faces different scrutiny and has different considerations in other labor areas ...
- ... law to ensure compliance with applicable law. For additional guidance, see Independent Contractor Agreements. Major Negotiation, Drafting, and Legal Issues and Supply of Services Agreementa Resource Kit. For more information on Independent contractor laws and classification issues, see Independent Contractor Tests and Risks of Worker Misclassification, Consulting Agreement Negotiation and Drafting, and Independent ...

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Independent Contractor Agreement Drafting Checklist

Checklist | Non-jurisdictional

Independent Contractor Agreement Drafting Checklist This is a checklist for drafting an Independent contractor agreement. For furtherguidance on Independent contractor agreements, see Independent Contractor Agreements: Major Negotiation, Drafting, and Legal Issues. For information on Independent contractor and employee classification, see Independent Contractor Tests and Risks of Worker Misclassification and Independent Contractor and Employee Classification: Special Tax Issues: by Littler Mendelson, P.C. This is a checklist for drafting an independent contractor agreement. For further guidance on independent contractor agreements, see ...

....This is a checklist for drafting an independent contractor agreement. For further guidance on independent contractor agreements, see Independent Contractor Agreements: Major Negotiation, Drafting, and Legal Issues. For information on Independent ...

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Independent Contractor Agreement (Pro-service Recipient) (CA)

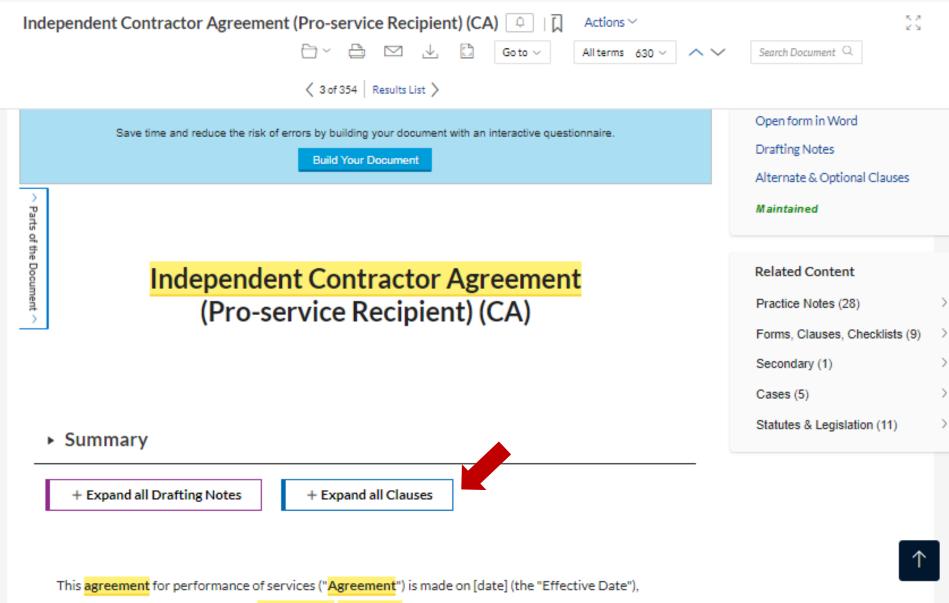


Quick View #1

Quick View #



Template | Automated Template | California



This agreement for performance of services ("Agreement") is made on [date] (the "Effective Date"), between [person or firm engaging independent contractor's services] ("Client"), with a principal place of business at [address], and [Independent contractor] ("Contractor"), an independent contractor, with a principal place of business at [address].

Client: -None-

Automated Templates

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Independent Contractor Agreement (Pro-service Recipient) (CA) Upload Answer File

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Outline

Form Summary

Actions .

Term of Contract

Form Summary

- Client
- Contractor
- Services
- Payment
- Insurance
- Termination
- Moral Rights and Non-Solicitation
- Client: Notices
- Contractor: Notices
- Dispute Resolution
- Final Document Notes

This form is an independent contractor agreement between an independent contractor and the party for whom the independent contractor will perform specified services in California. This template includes practical guidance, drafting notes, alternate clauses, and optional clauses.

This form has been drafted with terms that favor the client receiving the services and is intended for private employers. Its language has been customized to comply with California and federal law. As a result, the text of this form differs from the non-jurisdictional Independent Contractor Agreement (Pro-Service Recipient).

The terms "Contractor" and "Client" are used to help avoid the parties' relationship being characterized as an employee/employer relationship. Note, however, that the key determination of whether a worker is characterized as an employee or independent contractor hinges on control. The more a Client controls a Contractor, the more likely an employee/employer relationship exists instead of a client/independent contractor relationship.

The determination of whether a worker is properly classified as an employee or an independent contractor faces different scrutiny and has different considerations in other labor areas such as for unemployment and disability insurance requirements, income tax withholdings, and workers' compensation claims. In general, the basic questions still revolve around the right to control, but there are specific tests in California for specific industries and rebuttable presumptions for certain types of employees. Counsel should therefore consult both relevant federal and state laws to ensure compliance with applicable law.

For additional guidance, see Supply of Services Agreements Resource Kit. For more information on California's independent contractor laws and classification. issues, see Independent Contractors (CA). For state-specific independent contractor agreement forms, see the Independent Contractors and Interns column of Wage and Hour State Expert Forms Chart.

For additional guidance on drafting an independent contractor agreement, see Independent Contractor Agreements: Major Negotiation, Drafting, and Legal Issues, Supply of Services, and General Terms and Conditions for Services (Pro-Customer).

For information on independent contractor and employee classification, see Independent Contractor Tests and Risks of Worker Misclassification and Independent Contractor and Employee Classification: Special Tax Issues.

For tracking of recent case law and agency guidance affecting independent contractor agreements in California and other key federal, state, and local Labor & Employment legal developments, see Labor & Employment Key Legal Developments Tracker (Current).







Parts of the Document

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contractor status. For further guidance, see Independent Contractor Tests and Risks of Worker Misclassification and Independent Contractors State Practice Notes Chart.

Contractor shall devote such working time and attention to the performance of the Services as required to satisfy all duties and responsibilities of Contractor in finishing the assignment.

Contractor agrees to devote a minimum of [number] hours per [day/week/month] to performing the Services.

- Drafting Note

Drafting Note to Section 1.2. Second Paragraph

Although Contractor is solely in charge of methods and performance of services, the Client can still demand due attention, successful completion, compliance with applicable laws, and compliance with Client's policies while on site or interacting with others on behalf of Client. Clients should be careful to limit site access and interaction with Client constituents to an "as necessary" basis. The IRS and DOL look at location of work as a factor in determining whether there is an employee/employer relationship or independent contractor relationship. A Contractor should work onsite only if necessary. Although the Client should not require the Contractor to work on a particular schedule where it can be avoided, the Agreement should require the Contractor to dedicate a minimum amount of time to performing the covered services. For further guidance, see Independent Contractor Tests and Risks of Worker Misclassification and Independent Contractors State Practice Notes Chart.

Clients should make sure that demanding compliance with company policies and regulations does not create an employment relationship in their state. Most states accept that in these limited situations, there is an interest in supporting work policies designed to protect ethics, office conduct, health and safety and other work-related concerns. Clients need to understand to what extent their state laws allow them to enforce policies on a Contractor.

Contractor shall perform [his/her/its] obligations hereunder in compliance with the terms of this Agreement and any and all applicable laws and regulations. If necessity requires Contractor to perform any Services on Client's property or requires Contractor to interact with any of Client's employees, customers, vendors, affiliates or members of the general public, Contractor shall comply with all of Client's policies and regulations.

ARTICLE II. Term of Contract

2.1. This Agreement will become effective on the Effective Date and will continue in effect until the Services provided for in this Agreement have been performed to Client's reasonable satisfaction.

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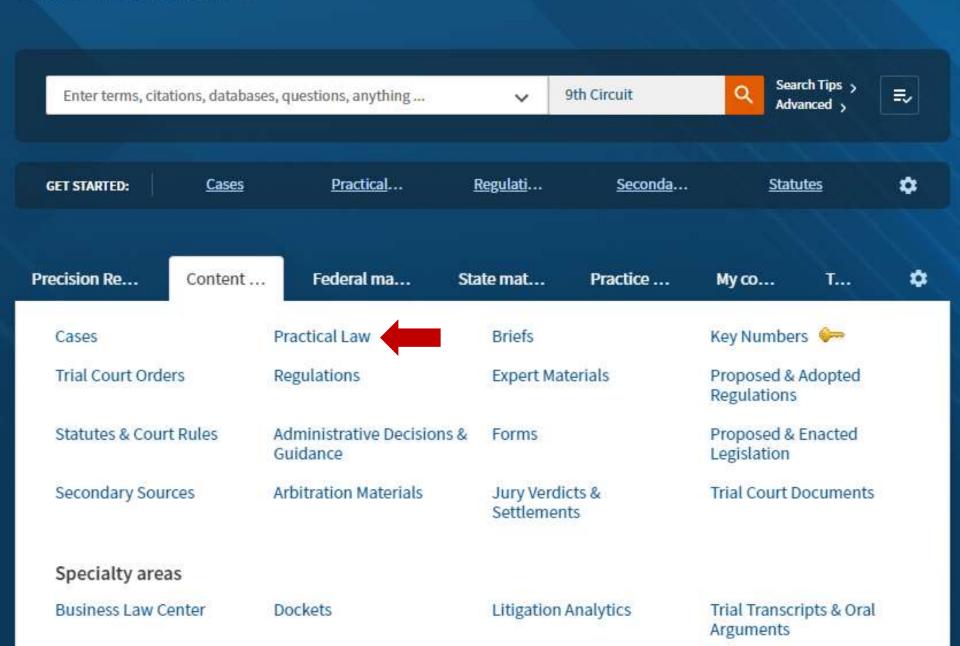
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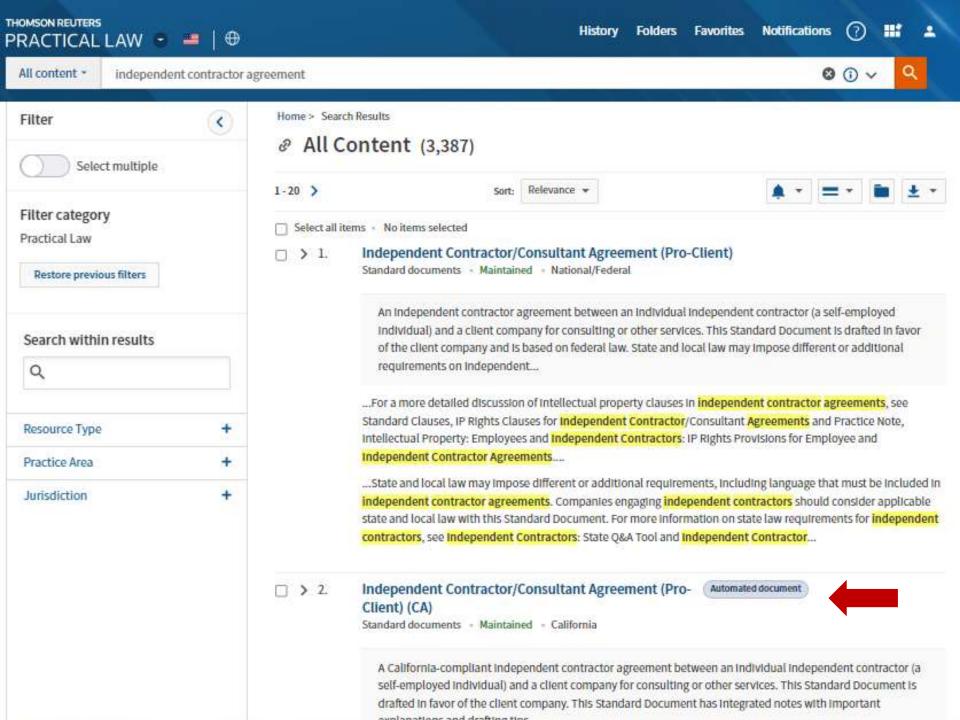
Matter Maps provide an overview of the phases of work and core tasks for legal matters, with links to relevant Practical Law resources.

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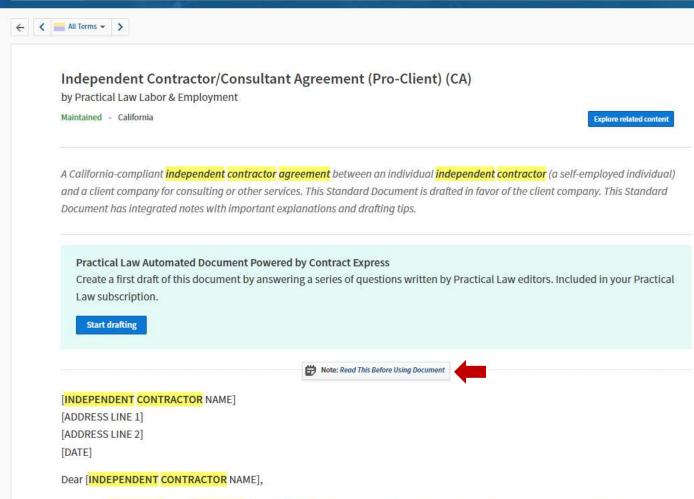
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This letter agreement (this "Agreement") sets forth the terms and conditions whereby you agree to provide certain services (as described in Schedule 1) to [CLIENT COMPANY NAME], with offices located at [ADDRESS], a [STATE OF ORGANIZATION] [ENTITY TYPE] (the "Company").

Services.

- 1.1 The Company engages you, and you accept such engagement, as an independent contractor to provide certain services to the Company on the terms and conditions set forth in this Agreement.
 - 1.2 You shall provide to the Company the services listed on Schedule 1 (the "Services").

Independent Contractor/Consultant Agreement (Pro-Client) (CA) California

Read This Before Using Document

This independent contractor or consultant agreement is a short-form letter agreement between an individual independent contractor and a client (assumed to be a corporate entity in this document) for consulting or other services. It is drafted in an informal letter format and may be appropriate for a short-term engagement or specific project. This Standard Document assumes that the independent contractor is genuinely self-employed and is not an employee of the client company (see Drafting Note, Independent Contractor Status).

On September 4, 2020, Governor Newsom signed A.B. 2257 into law effective immediately, A.B. 2257 repeals A.B. 5's Section 2750.3 of the California Labor Code and both adds several new ABC test exceptions and revises certain preexisting exceptions, including those for businessto-business contracts, referral agencies, and freelance writers and editors (Cal. Lab. Code §§ 2775 to 2787). Effective January 1, 2022, A.B. 1506 and A.B. 1561, which were signed into law on September 27, 2021 and September 30, 2021 respectively, modify and add certain ABC test exceptions. For more information, see:

- Practice Note, Legal Tests for Independent Contractor Classification Under California Law.
- Drafting Note, Use Employment Counsel to Customize Independent Contractor Agreement.
- Drafting Note, California Tests for Independent Contractor Classification.

For information on reporting and other payment obligations, see Practice Note, Managing Independent Contractors Under California Law.

This Standard Document also assumes that the independent contractor is not a labor contractor providing workers to the client employer to perform labor that is within the usual course of the client employer's business, which would subject the labor contractor and client employer to the requirements of Section 2810.3 of the California Labor Code (for more information, see Legal Update, California Law to Make Companies Liable for Employment Violations of Independent Labor Contractors).

This Standard Document is intended for the engagement of an individual independent contractor. The individual may have organized their business as a sole proprietorship or limited liability company (LLC), for example, and may have hired or engaged employees or contractors to assist in providing services, but they are treated as an individual for purposes of this agreement. For a professional services agreement between two business entities, see Standard Document, Professional Services Agreement. For a short-form services agreement between entities, see Standard Document, Services Agreement (Pro-Customer).

For jurisdiction-neutral information on the classification of independent contractors, see

- Practice Note, Independent Contractor Classification.
- Evaluating and Engaging Independent Contractors Checklist.
- Standard Document, Questionnaire to Determine Independent Contractor Status Under the FLSA.

For information on the impact of COVID-19 on independent contractors, see Standard Document, Independent Contractor/Consultant Agreement (Pro-Client): Drafting Note: Impact of COVID-19 on Independent Contractor Arrangements.

Use Employment Counsel to Customize Independent Contractor Agreement

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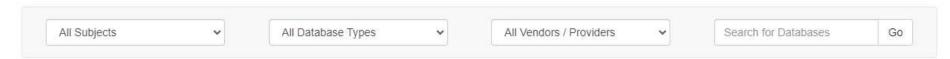
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Parking Minimums Reconsidered: Housing Against a Ubiquitous California Feature

Thomas Lee January 17, 2023

In the last few years, and especially with the COVID-19 pandemic, the housing crisis in California has grown. Fortunately, this has finally spurred a series of measures aimed to curb this crisis, and both residents and legislators are taking increasingly drastic and once-unthinkable actions to do so. This space has discussed legislation and policies which have changed and or taken on some of California's most important issues in the name of affordable housing: Sports stadium construction, environmental regulation, labor policies. But now legislators have taken aim at one of California's most ubiquitous features: Parking and parking lots.

Environmental, Land Use & Natural Resources



California Sues Drug Companies Over Cost of Insulin, Alleging Artificially **High Prices**

Katherine Proctor January 13, 2023



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PRACTICE GUIDES

show results from Internet Law and Practice in California

\$17.38 I. Form: Social Media Influencer Independent Contractor Agreement

Comment: If the Social Media Influencer Independent Contractor Agreement is directly with an individual talent, as opposed to a media agency, then this release is not necessary.

This Statement of Work ("SOW") is entered into as of the date of the last signature below (the "SOW Effective Date") by and between _ [name of company]_ ("Company") and _ [name of consultant]_ ("Consultant"), and is subject to the terms of the Social Media Influencer Independent Contractor Agreement entered into by the parties on __[date]__, 2020 ("Agreement").

PRACTICE GUIDES show results from Working With Independent Contractors, Leased Workers, and Outsourcing STEP 30. Draft Agreement Between Principal and Independent Contractor

AGREEMENT BETWEEN PRINCIPAL AND INDEPENDENT CONTRACTOR

Draft an agreement that increases the defensibility of an independent contractor relationship:

PRACTICE GUIDES

show results from Drafting Employment Documents for California Employers

\$4.331. Form: Preamble, General Conditions

INDEPENDENT CONTRACTOR CONSULTING AGREEMENT

This Independent Contractor Agreement (hereinafter "Agreement") is made as of _ [date]_ _, between _ [contractor's name]__, an independent contractor ("Contractor"), and _ [principal's name]_ _ ("Company").

PRACTICE GUIDES show results from Drafting Employment Documents for California Employers \$4.23 f. Form: Trade Secrets and Confidential Information: Confidentiality Obligation

To protect trade secrets and confidential information, it is essential to include a comprehensive confidentiality provision, such as the one above, in the independent contractor agreement.

d. After termination of this Agreement, Sales Agent shall not directly or indirectly, or by action in concert with others, use unlawful or unethical means to induce or influence, or seek to induce or influence, any person who is engaged by



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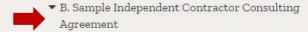
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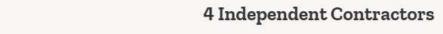
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- ▼ 4 Independent Contractors

\$4.1 I. INTRODUCTION TO INDEPENDENT CONTRACTORS

- II. TESTS FOR INDEPENDENT CONTRACTOR STATUS
- III. DETERMINING WORKER'S STATUS
- ▼ IV. ENGAGING INDEPENDENT CONTRACTOR
 - A. Sample Commissioned Sales Agent Agreement



\$4.33 1. Form: Preamble, General Conditions \$4.34 2. Form: Contractor's Scope of Work



\$4.1 I. INTRODUCTION TO INDEPENDENT CONTRACTORS

In California, a person who performs services for compensation for another (the principal) can be either an employee or an independent contractor. The principal-independent contractor relationship differs in both nature and consequences from an employer-employee relationship. An employer has certain control rights and a multitude of obligations regarding an employee that are not part of a principal-independent contractor relationship. Further, although employees are entitled to a variety of benefits and protections afforded by various laws, such as unemployment benefits, workers' compensation, and unpaid leave, independent contractors are not entitled to any such benefits based on the performance of services for the principal.

Whether a person is an employee or independent contractor is determined under three primary tests: the common law control test (see \$\$4.2-4.3), the ABC test (see \$4.3A), and the economic realities test (see \$\$4.4-4.5). The common law control test (also referred to as the usual common law rules) is used for federal tax purposes as well as for statutes that do not expressly apply a different standard. The ABC test is used for wage and hour, workers' compensation, and state unemployment tax purposes in California. The economic realities test is used for most federal employment laws that are intended to protect workers' rights, such as the Fair Labor Standards Act of 1938 (FLSA) (29 USC \$\$201-219) and the Family and Medical Leave Act of 1993 (FMLA) (29 USC \$\$2601-2654), or laws intended to prevent discrimination, such as Title VII of the Civil Rights Act of 1964 (42 USC \$\$2000e—2000e—17). As a practical matter, however, all tests look at the same general facts and circumstoned to determine the scope of the relationship and the nature of the worker's services. Set



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4 Independent Contractors

Drafting Employment Documents for California Employers

§4.33 1. Form: Preamble, General Conditions

Click to Download Form

For your convenience, the form text in \$4.33 through \$4.37 is contained in a single file. Downloading any one of the included sections will download all these sections.

INDEPENDENT CONTRACTOR CONSULTING AGREEMENT

This Independent Contractor Agreement (hereinafter "Agreement") is made as of _ _[date]_ _, between _ _[contractor's name]_ _, an independent contractor ("Contractor"), and _ _[principal's name]_ _ ("Company").

Company and Contractor mutually agree to the following terms and conditions:

I. GENERAL CONDITIONS

A. Term of Agreement. Unless sooner terminated in accordance with this Agreement, the term of this Agreement shall be from _ _[date]_ _, to _ _[date]_ _. This term may be renewed for not more than 2 additional periods of _ _[state length of renewal periods, e.g., 3 months]_ _ by agreement of the parties in accordance with Section VI.B. below. This Agreement is terminable on 30 days' written notice by either Contractor or Company.

B. Governing Law. This Agreement shall be construed under the laws of the State of California.





BOOKS & TREATISES

Books



KENNETH A. ADAMS, A MANUAL OF STYLE FOR CONTRACT DRAFTING (4th ed. 2017); LRC Reading Room KF807 .A33 2017

LENNÉ EIDSON ESPENSCHIED, CONTRACT DRAFTING: POWERFUL PROSE IN TRANSACTIONAL PRACTICE (3d ed. 2019); LRC Reading Room KF807 .E84 2019

GEORGE W. KUNEY & DONNA C. LOOPER, LEGAL DRAFTING IN A NUTSHELL (5th ed. 2021); LRC Reference Reserve Materials KF250. H343 2021; also available electronically via West Study Aids

TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO (2d ed. 2014); LRC Reading Room KF807.S73.2014

Treatises and practice guides



DAVID C. BURGESS ET AL., DRAFTING BUSINESS CONTRACTS: PRINCIPLES, TECHNIQUES, & FORMS (2021); LRC Reading Room KF801 .D72; also available electronically via CEB OnLaw Pro

ROBERT A. FELDMAN & RAYMOND T. NIMMER, DRAFTING EFFECTIVE CONTRACTS: A PRACTITIONER'S GUIDE (2022, Westlaw)

VLADIMIR R. ROSSMAN & MORTON MOSKIN EDS., COMMERCIAL CONTRACTS: STRATEGIES FOR DRAFTING & NEGOTIATING (2022, Westlaw)

Peter Siviglia, Commercial Agreements: A Lawyer's Guide to Drafting and Negotiating (2021, Westlaw)

TINA L. STARK ED., NEGOTIATING AND DRAFTING CONTRACT BOILERPLATE (2020, Lexis)

Example of a practice guide







Q drafting business contract

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addition, experienced counsel can usually predict how most issues will be resolved.

\$1.13 B. Approaching the Task of Drafting

Approaches. Few attorneys sit down with a blank screen or a piece of blank paper to draft a document from scratch. Most attorneys refer to form documents from their files and make changes necessary to create a new document that reflects the current agreement of the parties. Other attorneys adopt a "cut and paste" approach, adding language from a variety of samples or sources. See \$\$1.9-1.10.

Consider expected audience. The attorney should draft a document that can be understood by the expected audience—the parties who will sign it and others who may be affected by it. The document may be technically perfect, but if the parties cannot understand or apply its terms, counsel will have failed. Indeed, retail installment sale contracts and other consumer contracts are subject to very specific statutory drafting and content requirements so that they will be readily understandable by consumers.

See, e.g., CC \$\$1803.1-1803.11. See generally California Law of Contracts, chap 6 (Cal CEB).

SI 12 P Approaching the Teels of Drofting

Final thoughts



Don't start from scratch—there are many resources that can provide starting points.

Google is not the best tool to find contract drafting resources.

Contact a reference librarian for help!

Contact us



Reference Desk hours

Monday–Thursday: 9 a.m.– 6 p.m.

Friday: 9 *a.m.* − 5 *p.m*

Sunday: 12 *p.m.*−4 *p.m*

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