

LRC Research Training

Contract Drafting Fall 2023

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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
- Generative AI tools

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 to...



Google			
independent contractor agreement			
	Google Search	I'm Feeling Lucky	

Or you might even be tempted to...





But there are better tools!



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

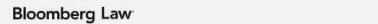
- State websites have free forms (but no analysis)
- Print books at the LRC (and other law libraries) have forms and analysis

Issues to think about

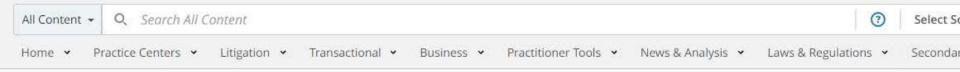
- Author/creator
- Age of materials
- Contract style/clauses
- Content
- Jurisdiction
- Industry
- Guidance/analysis

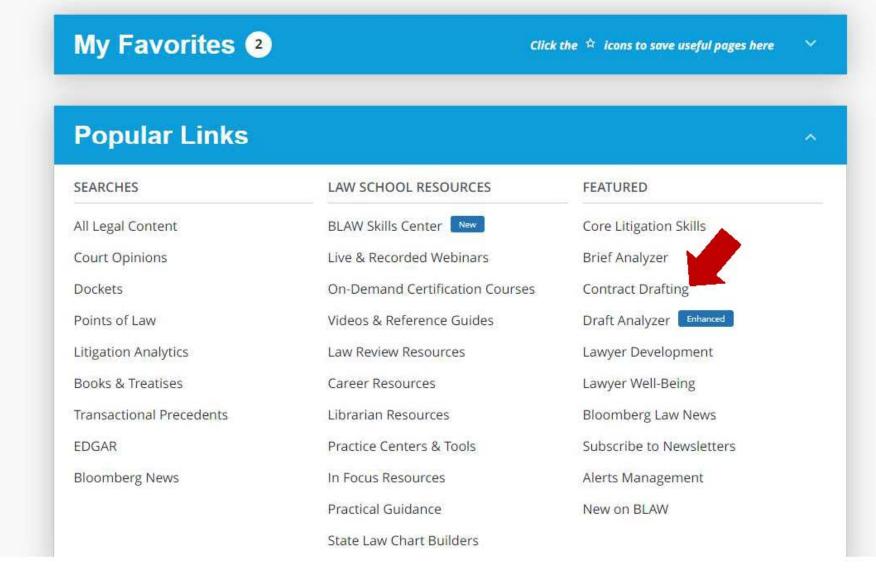


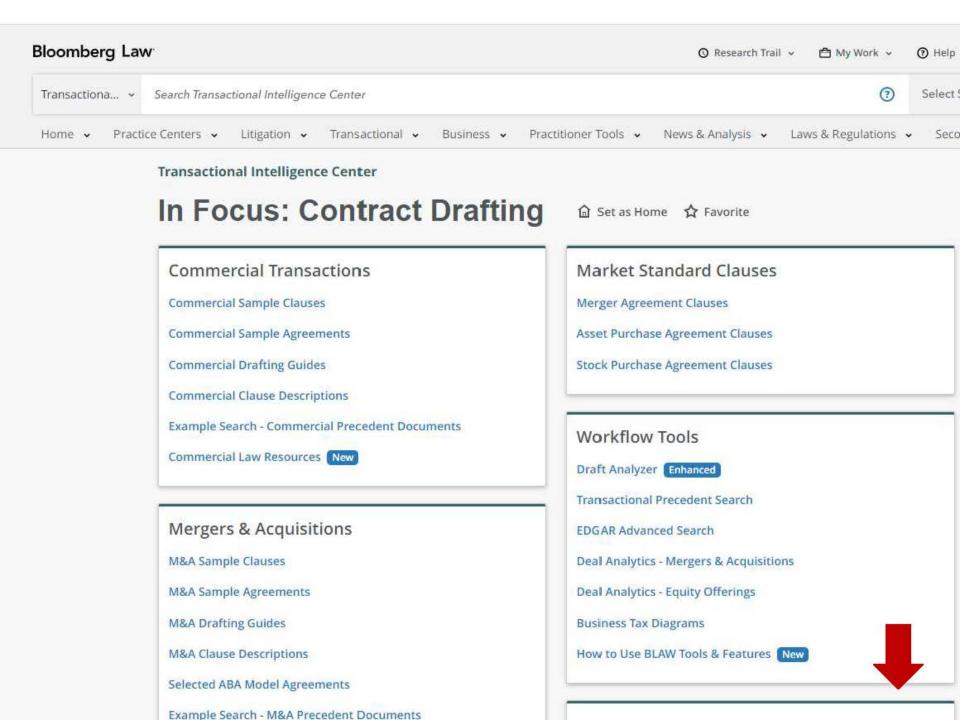
Bloomberg Law



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Employment

Employment Sample Agreements



Employment Forms & Letters

Example Search - Employment Precedent Documents

Related Practical Guidance

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Law Firm Client Alerts

Orrick, Herrington & Sutcliffe LLP, Alert, Monthly Highlights - UK Employment Law - August 2023

Orrick, Herrington & Sutcliffe LLP, Alert, Banking Agencies Issue Guidance on Managing Risks with Fintechs and Other Third Parties: How It May Affect Your Business

Reed Smith LLP, Article, The Importance Of Drafting Clear Contractual Indemnity Provisions

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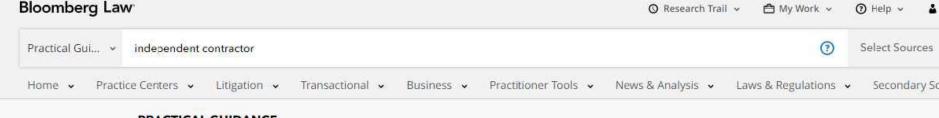
Abortion Law

Deal Points

SPACS

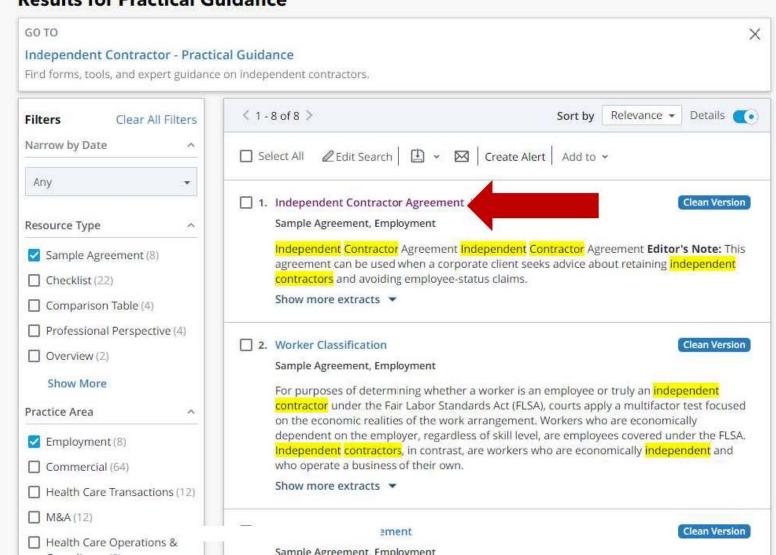
State Consumer Privacy Laws

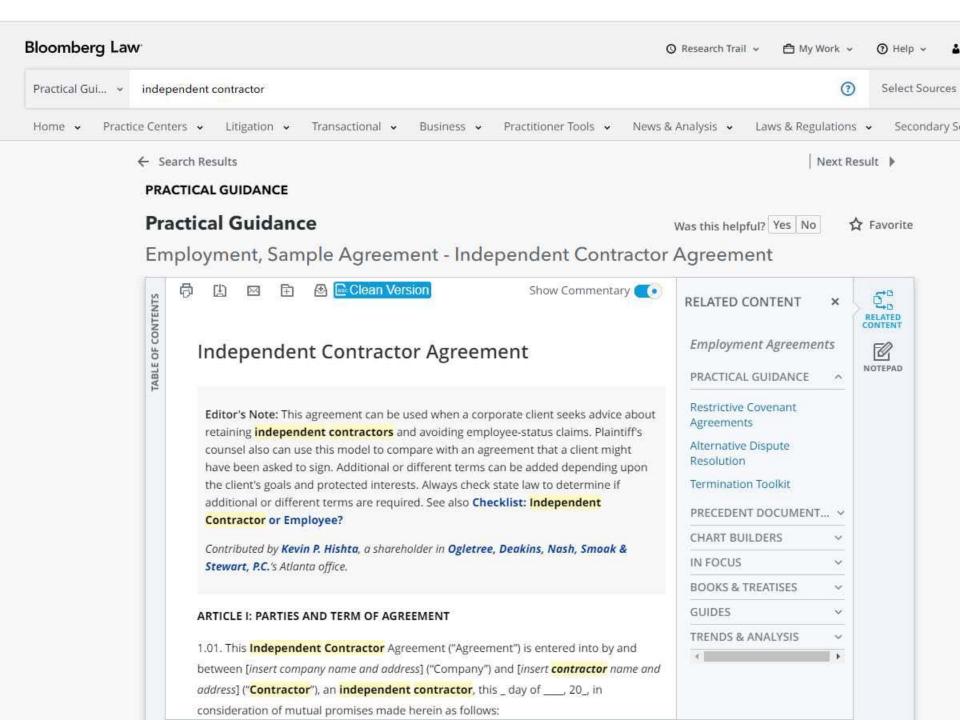
Reference Materials



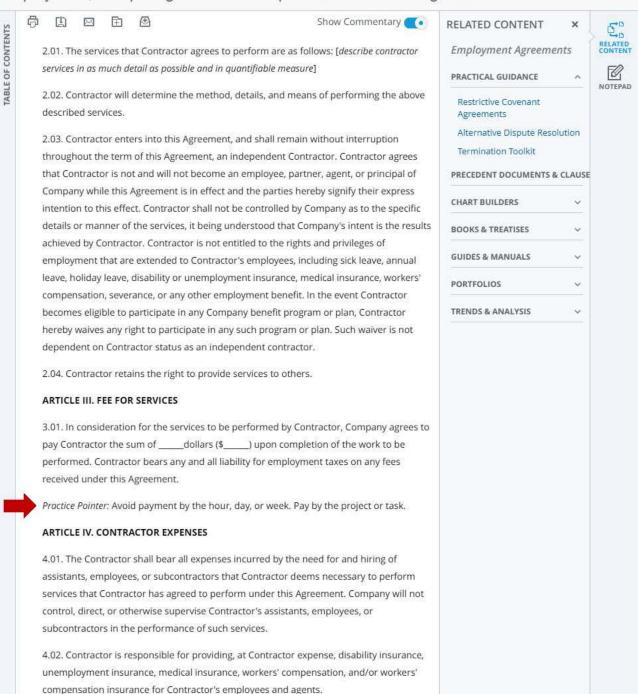
PRACTICAL GUIDANCE

Results for Practical Guidance





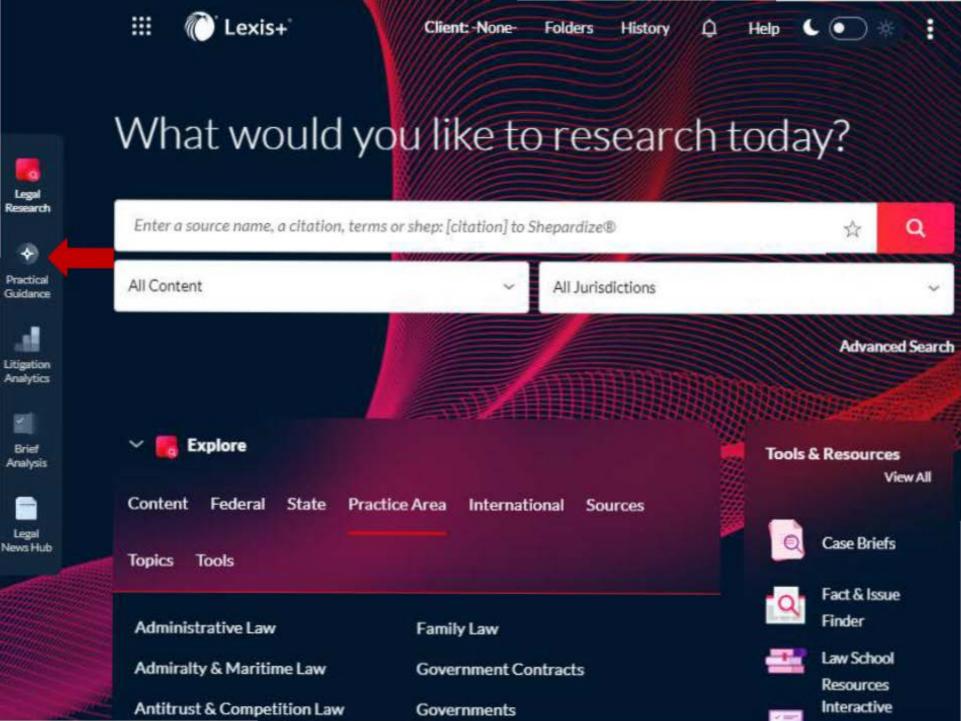
Employment, Sample Agreement - Independent Contractor Agreement







Lexis Practical Guidance





Client: -None-Folders

History









What task would you like to accomplish today?

independent contractor agreement

Q

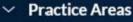
Documents

Independent Contractor Agreement Drafting Checklist

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

Legal Phrases

independent contractor agreement





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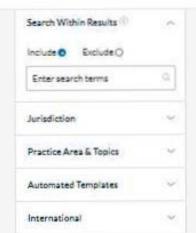


Results for: independent contractor agreement Natural Language

10



Quick View -



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/lemployer 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 (sees different scrutiny and has different
- ... law to ensure compliance with applicable law. For additional guidance, see Independent Contractor Agreements. Major Negotiation, Drafting, and Legal Issues and Supply of Services Agreements 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 ...

20

Independent Contractor Agreement Drafting Checklist

Checklist | Non-jurisdictional

considerations in other labor areas ...

Independent Contractor Agreement Drafting Checkles This is a checkles for drafting an Independent contractor agreement. For further guidance on Independent contractor agreements, see Independent Contractor Agreements, Major Negotistion, 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 draffing 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 ...

3 [

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

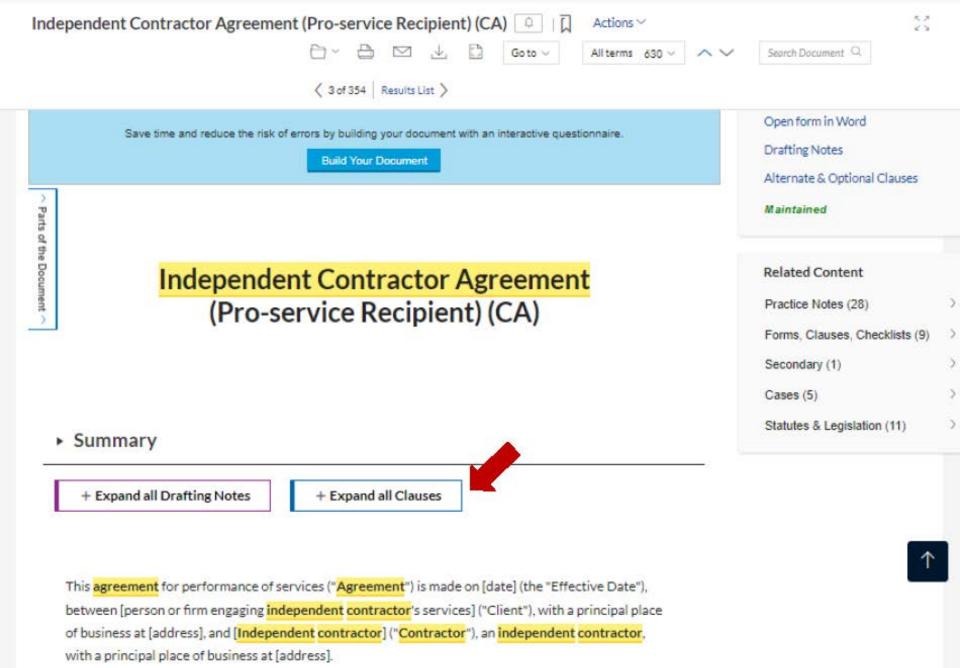


Quick View [1]

Quick View 54

Template | Automated Template | California

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



Automated Templates

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

Interview Preview Document Q&A Summary



Form Summary

Actions .



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).









Services provided for in this Agreement have been performed to Client's reasonable satisfaction.

✓ About This Document

Open form in Word

Drafting Notes

Alternate & Optional Clauses

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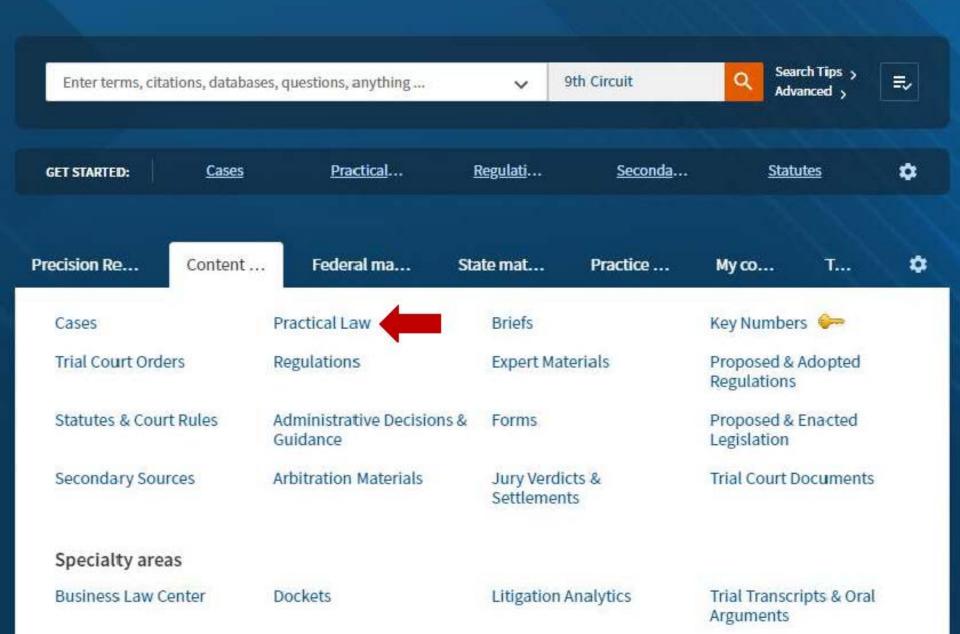
Thomson Reuters Practical Law (Westlaw)





-





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independent contractor agreement











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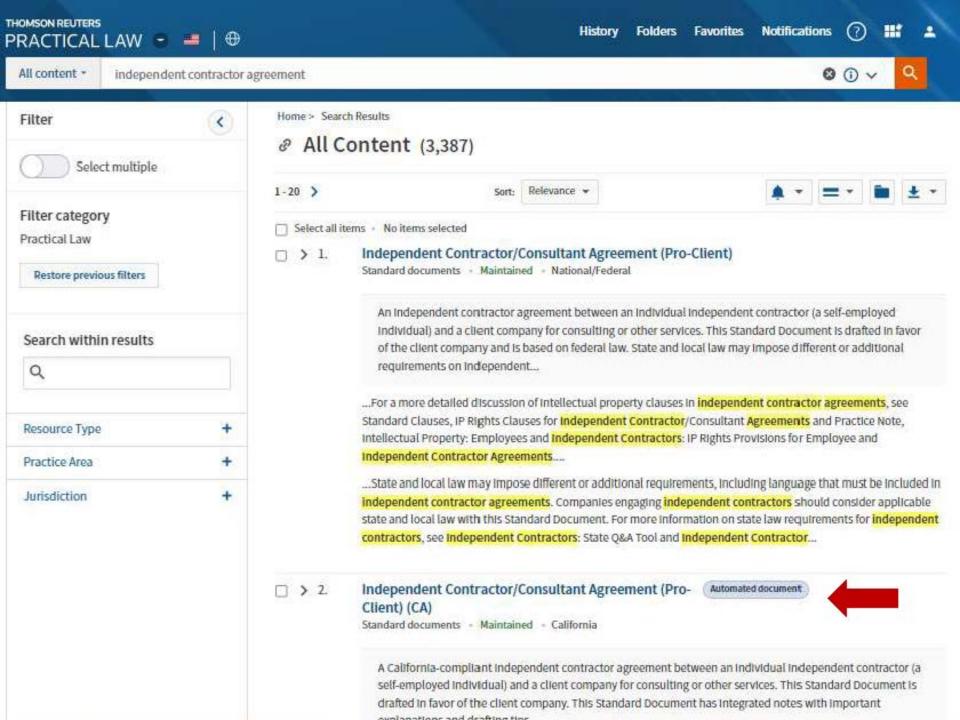
Matter Maps provide an overview of the phases of work and core tasks for legal matters, with links to relevant Practical Law resources.

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independent contractor agreement







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

by Practical Law Labor & Employment

Maintained - California

Explore related content

A California-compliant independent contractor agreement between an individual independent contractor (a self-employed individual) and a client company for consulting or other services. This Standard Document is drafted in favor of the client company. This Standard Document has integrated notes with important explanations and drafting tips.

Practical Law Automated Document Powered by Contract Express

Create a first draft of this document by answering a series of questions written by Practical Law editors. Included in your Practical Law subscription.

Start drafting

Note: Read This Before Using Document



[INDEPENDENT CONTRACTOR NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

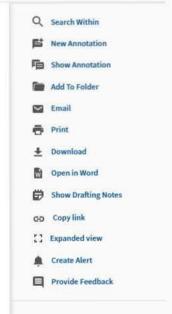
[DATE]

Dear [INDEPENDENT CONTRACTOR NAME],

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.

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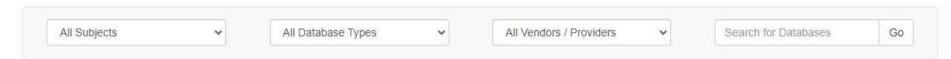
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The Aspen Learning Library (formerly the Wolters Kluwer Online Study Aid Library) offers online digital access to over 200 popular law school study aids and added video and audio content to provide an illustration of the legal theory. Includes the Examples and Explanations series.

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The Avalon Project will mount digital documents relevant to the fields of Law, History, Economics, Politics, Diplomacy and Government. We do not intend to mount only static text but rather to add value to the text by linking to supporting documents expressly referred to in the body of the text.

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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 Practor Inquary 13, 2023





independent contractor agreement

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Advising California Employers

and Employees

Browse all 81 Titles with results...

1-10 of 666 Secondary Sources Publication Results

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



Secondary Sources

Employment Law

- ▶ Advising California Employers and Employees
- ▶ California Wage and Hour: Law and Litigation
- ▼ Drafting Employment Documents for California Employers

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Preface

About the Authors

About the Update Authors

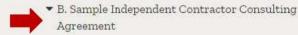
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Cutoffs and Citation

- ▶ 1 Hiring Forms and Checklists
- ▶ 2 Immigration Issues in Hiring
- ▶ 3 Employment Contracts
- ▼ 4 Independent Contractors

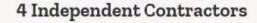
\$4.1 I. INTRODUCTION TO INDEPENDENT CONTRACTORS

- 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 circums to determine the scope of the relationship and the nature of the worker's services. See the determine the scope of the relationship and the nature of the worker's services.





▼ Drafting Employment Documents for California Employers

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

\$4.33 1. Form: Preamble, General Conditions

\$4.34 2. Form: Contractor's Scope of Work

94.35 3. Form: Compensation

\$4.36 4. Form: Termination, Dispute Resolution

\$4.37 5. Form: Miscellaneous Provisions. Signatures

▶ C. Sample Confidentiality and Intellectual

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 and Treatises on Contract Drafting

Books



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

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 <u>KF250</u>. <u>H343 2021</u>; also available electronically via <u>West Study Aids</u>

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)

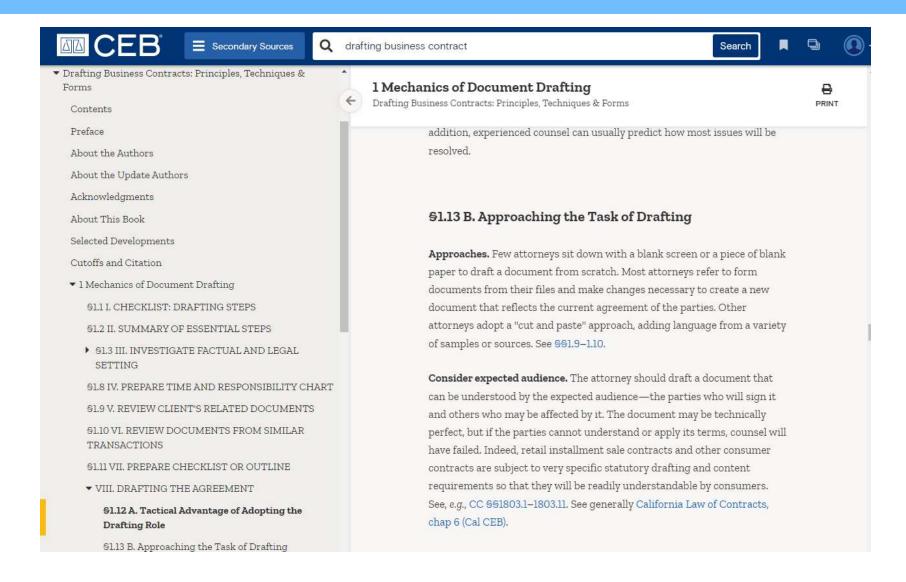
VLADIMIR R. ROSSMAN & MORTON MOSKIN EDS., COMMERCIAL CONTRACTS: STRATEGIES FOR DRAFTING & NEGOTIATING (2022, Westlaw)

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





Generative AI and Drafting



Generative AI tools (like ChatGPT) are built on large language models

ChatGPT was trained on large, publicly available datasets. (Note: ChatGPT did **not** have access to copyrighted material like your contract drafting textbook, law treatises, or the templates and guidance we just looked at in the databases.)

ChatGPT is **not** great at research. It is not a search engine, and of course, it does not have the judgment of an attorney.

LRC Guide to ChatGPT & Other Generative Al Tools for USD Law Students



ChatGPT demonstration

Final takeaways



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

Google is *not* the best tool to find sample contracts.

Recommended sources: Bloomberg Drafting Tools, Bloomberg Precedent Document Collection, TR Practical Law (Westlaw), Lexis Practical Guidance, CEB OnLaw Pro

Generative AI tools cannot replace the judgment of an attorney.

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

Telephone: (619) 260-4612

E-mail: <u>Ircrefer@sandiego.edu</u>

Chat: www.sandiego.edu/law/library