

LRC Research Training

Contract Drafting Spring 2022

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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

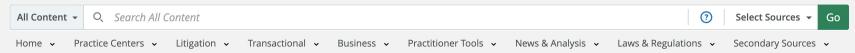
- State websites have free forms (but no analysis)
- Print books at the LRC (and other law libraries) have forms and analysis

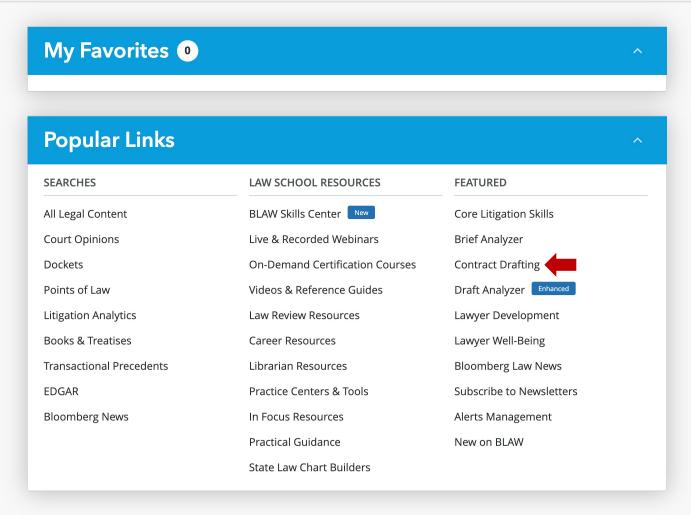
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- Author/creator
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- Contract style/clauses
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- Industry
- Guidance/analysis



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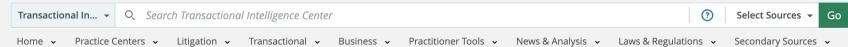




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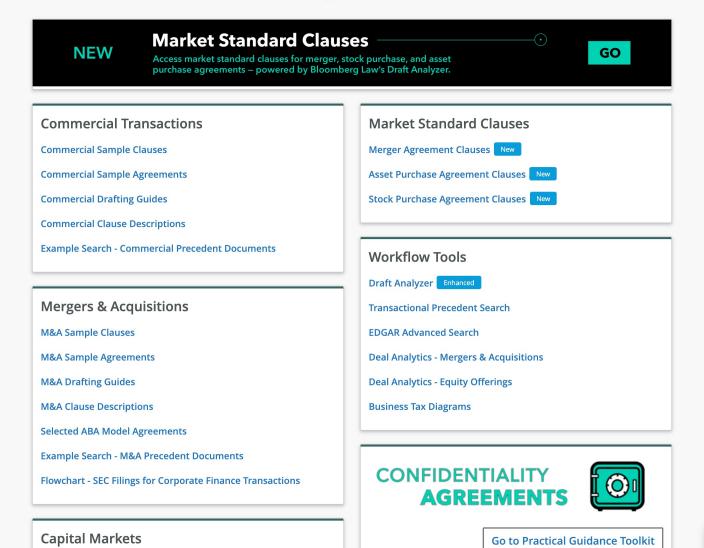
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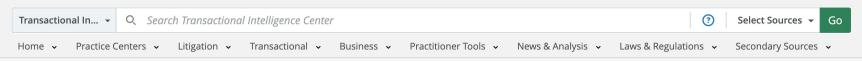
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Checklist (271) Sample Policy (183)	☐ 3. Employment, Sample Agreement - EEOC Consent Decree
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	9. Employment, Sample Agreement - Sample Arbitration Agreement
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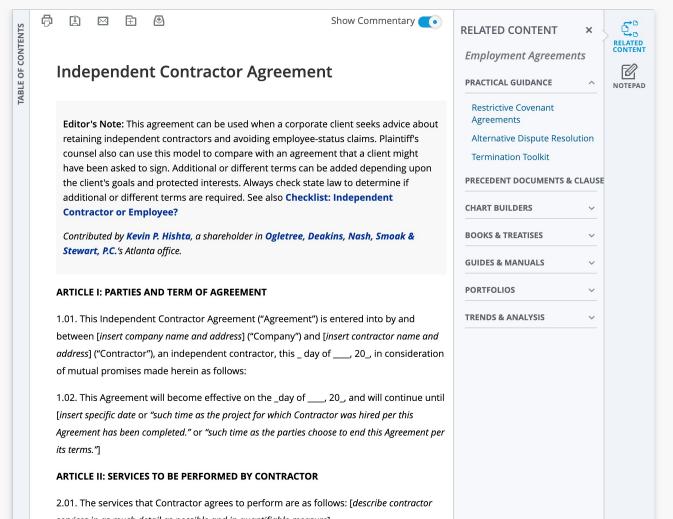


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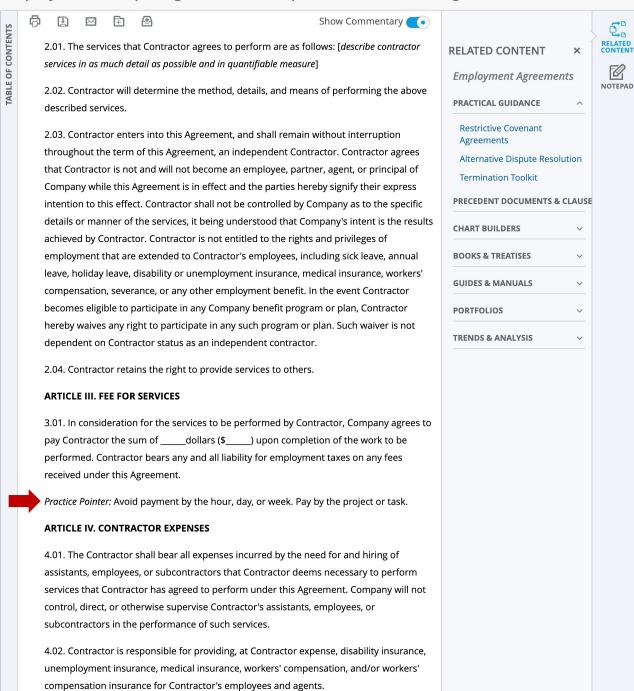
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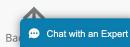
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Employment, Sample Agreement - Independent Contractor Agreement



Employment, Sample Agreement - Independent Contractor Agreement







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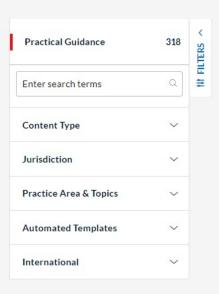


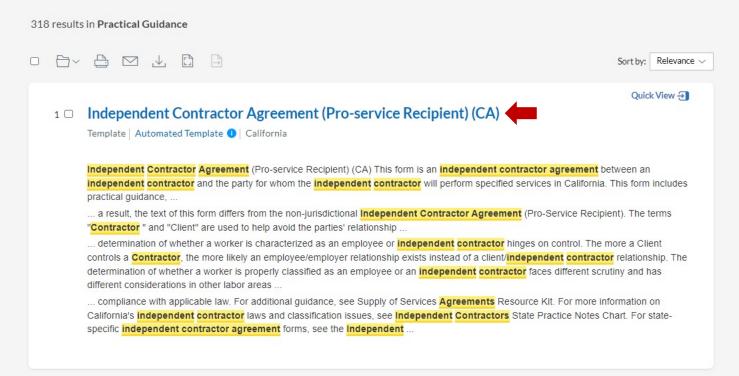


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Results for: independent contractor agreement 🧷 :







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□ Independent Contractor Agreement (Pro-service Recipient) (CT)

Template | Connecticut

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

- ... 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 ...
- ... 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 will be found to exist 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. ...

have altered their normal rules regarding unemployment benefits being granted to independent contractors and gig workers like





Client: -None-



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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].

Article I. SERVICES TO BE PERFORMED BY CONTRACTOR.

1.1. Specific Services.

Contractor, acting independently and not as an employee of Client, agrees to [describe in detail services to be performed].

Go to V

All terms 630 V



Search Document Q

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 or month] to performing the described services.

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.

- Drafting Note

Drafting Note to Third Paragraph of Method of Performing Services

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 on site 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.

Clients should make sure that demanding compliance with certain company policies and regulations does not create an employment relationship in California. 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 California law allows them to enforce policies on a Contractor. For further guidance, see Independent Contractor Tests and Risks of Worker Misclassification and Independent Contractors State Practice Notes Chart.

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, unless terminated earlier as provided in this Agreement.

- Drafting Note

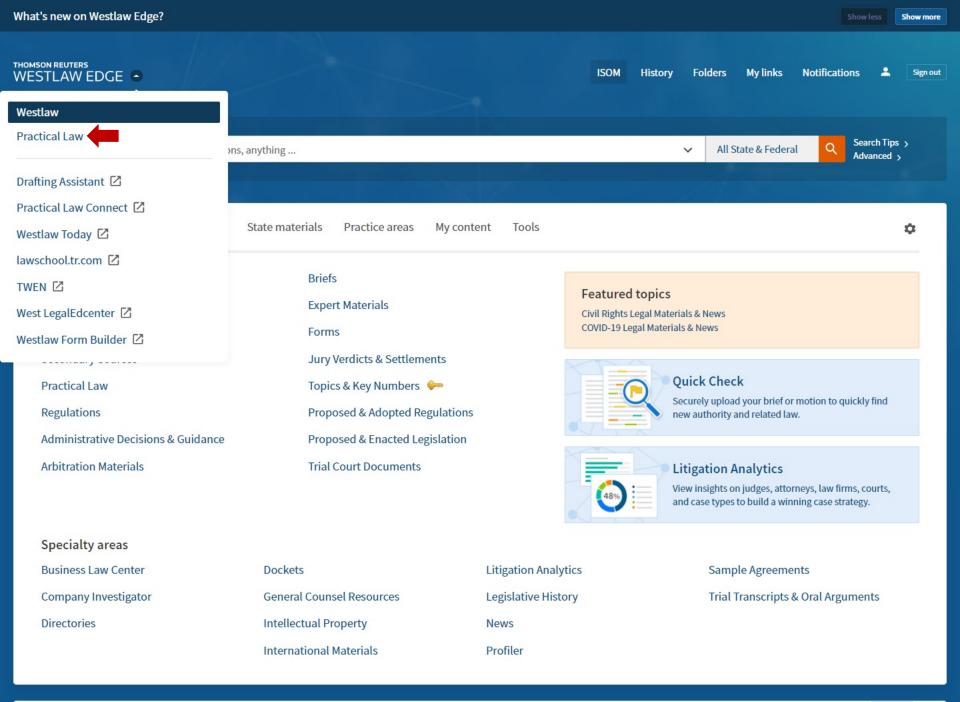
Drafting Note to Term of Contract

The agreement should include an appropriate term for the Contractor's engagement, which can vary

 ✓ About This Document Open form in Word **Drafting Notes** Alternate & Optional Clauses Maintained > Related Content



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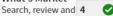
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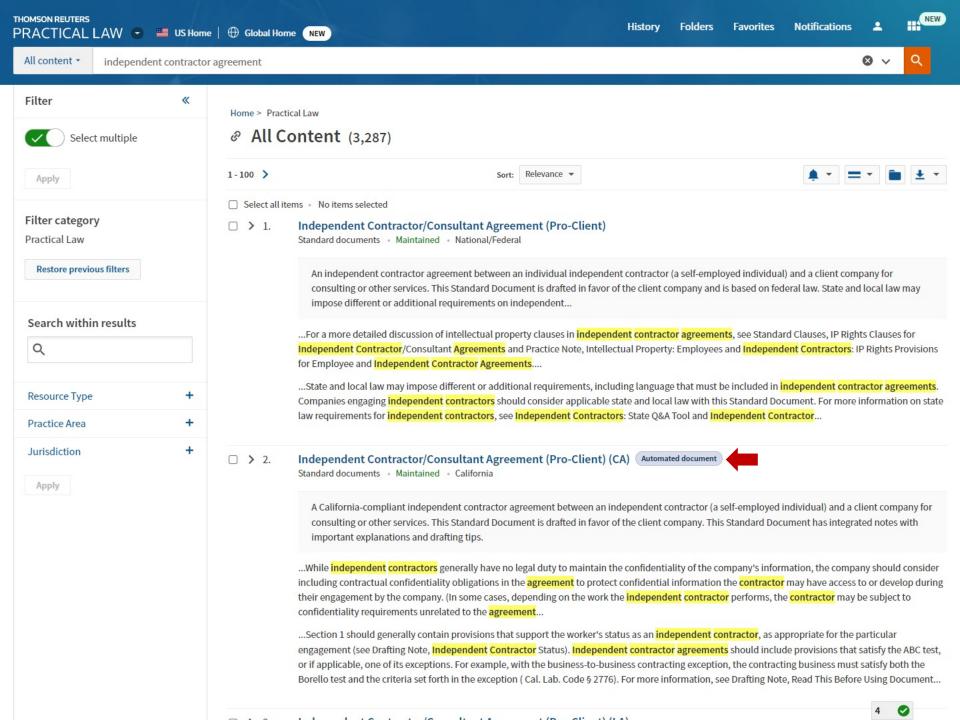
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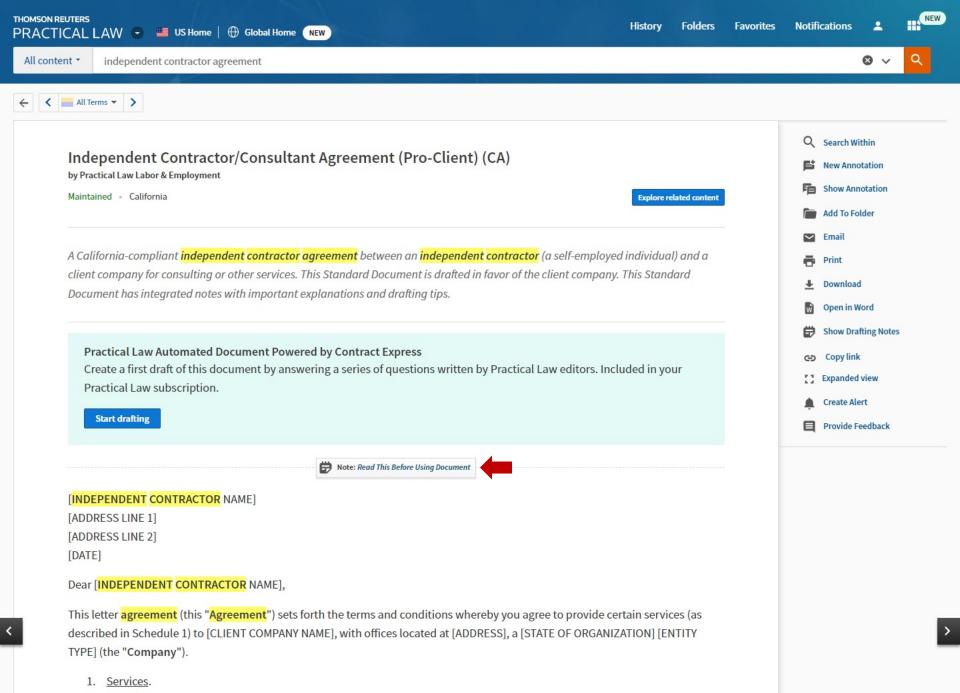
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1.1 The Company engages you, and you accept such engagement, as an independent contractor to provide certain





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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 service provider is properly classified as an independent contractor and is not an employee of the client company.

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 business-to-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, Ouestionnaire to Determine Independent Contractor Status Under the FLSA.

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FDLP users: You may access many online FDLP resources by searching the <u>library catalog.</u> Many federal materials are online at https://www.govinfo.gov/. The LRC will provide full access again as soon as possible. Other federal depositories may be located here: Federal Depository Library Directory.

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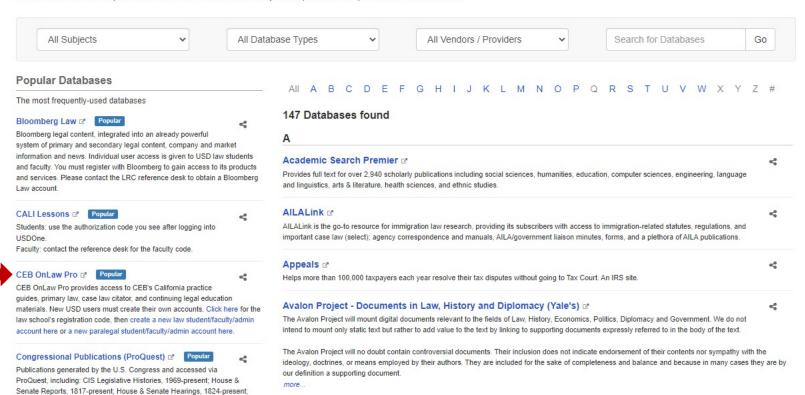
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USCIS and the Importance of Triple-Checking an Application

Theodore Ko December 21, 2021

Immigration attorneys must exercise due diligence right before submitting an application. Even though gathering all the attachments and information and filling out the application may have been a months-long process, you can't celebrate just yet. Before that application goes into an envelope, you must review -- and review again -- the completed materials for completeness and accuracy. The smallest error can cause an avalanche of consequences for your client.

Immigration Law



California Joint Employer Status Fueled by 'Control Over the Intermediary' in Shell Oil Case

Kristina Sherry December 21, 2021

As federal standards and tests for "joint employment" have been tinkered with under recent administrations, a California court has in the meantime found that Shell Oil Company (or a subsidiary thereof) was a "joint employer," even though it technically controlled workers via an "intermediary." The decision appears to lower the bar for what constitutes "control" in California joint employer status determinations.

Employment Law



Nint Circuit Files Replacement Opinion in Felon-in-Possession **Guilty Plea**

Nate Jackson December 21, 2021

The Ninth Circuit on Tuesday withdrew an opinion filed in August and filed a replacement opinion affirming the prejudice portion of the Northern District court's order denying a 28 U.S.C. § 2255 motion in which defendant Tyrone Pollard, Jr. challenged his felon-in-possession guilty plea on the ground that he was not informed of 18 U.S.C. § 922(g)'s knowledge-of-status element. The panel denied a petition for rehearing and, on behalf of the court, a petition for rehearing an banc.





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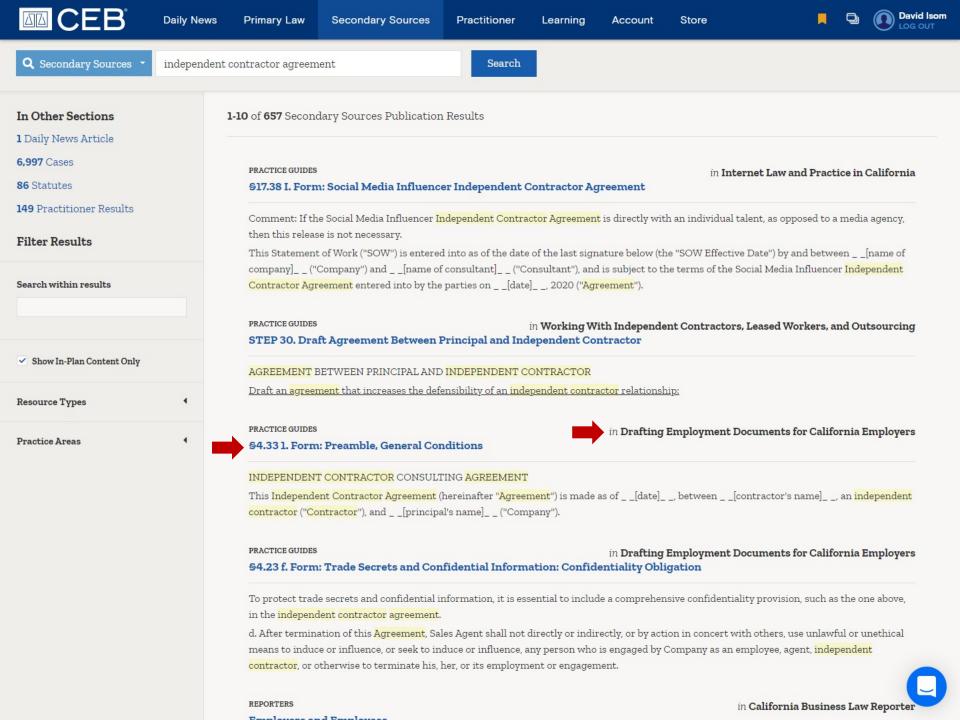
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\$4.37 5. Form: Miscellaneous Provisions, Signatures

4 Independent Contractors



\$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 circumstances to determine the scope of the relationship and the nature of the worker's services. See \$4.6. Except in limited circumstances, such as cases of fraud, principals always bear the burden of proving that the classification of the worker was proper.

Engaging a worker as an independent contractor should be viewed as a three-step process:

(1) gathering information about the worker and the scope of the relationship; (2) applying





BOOKS & TREATISES

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 <u>KF807 .E84</u> 2019

George W. Kuney & Donna C. Looper, *Legal Drafting in a Nutshell* (5th ed. 2021); LRC Reference Reserve Materials <u>KF250 .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 <u>KF807 .S73 2014</u>

Treatises and practice guides



David C. Burgess et al., *Drafting Business Contracts: Principles, Techniques, & Forms* (2021); LRC Reading Room <u>KF801 .D72</u>; also available electronically via <u>CEB OnLaw Pro</u>

Robert A. Feldman & Raymond T. Nimmer, *Drafting Effective Contracts: A Practitioner's Guide* (2021, <u>Westlaw</u>)

Vladimir R. Rossman & Morton Moskin eds., *Commercial Contracts: Strategies for Drafting & Negotiating* (2021, <u>Westlaw</u>)

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

Tina L. Stark ed., *Negotiating and Drafting Contract Boilerplate* (2020, <u>Lexis</u>)

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.

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