Independent Contractor Determination Checklist and Submission Form
Only to Be Used with Research/Grants

The State of California starts with the presumption that a worker is an employee. Labor Code Section 3357. This is a rebuttable presumption however, and the actual determination of whether a worker is an employee or independent contractor depends upon a number of factors, all of which must be considered, and none of which is controlling by itself. The recent Dynamex Operations West, Inc. V Superior Court case, expanded the interpretation on whether an individual can be hired as an independent contractor, to only permissible when all three of the following requirements are met:

- Minimal Direction: The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and*
- Usual Business: The worker performs work that is outside the usual course of the hiring entity's business; *and*
- Established Business or Trade: The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

INSTRUCTIONS: Please assess the checklist below. If the individual is determined to be an employee, please contact Human Resources to begin the hiring process. **If the Individual is determined to be an Independent Contractor, please complete the enclosed Assessment Questionnaire and email it to LegalAffairs@westernu.edu .**

Section I		
Current Relationship with WesternU	**YES**	**NO**
1. Does this Individual currently work for WesternU?	TREAT AS EMPLOYEE	GO TO #2
2. Does WesternU desire to hire this individual as an employee immediately following the termination of his or her services as an Independent Contractor?	TREAT AS EMPLOYEE	GO TO #3
3. In the prior 12 months was the Individual on the WesternU payroll in either a regular or temporary position, and are the services the Individual will now provide similar to those services provided while on our payroll?	TREAT AS EMPLOYEE	GO TO #4
4. Is the individual a retiree of WesternU?	TREAT AS EMPLOYEE	**GO TO SECTION II.**
Section II.		
Researchers	**YES**	**NO**
5. Will the individual perform work using WesternU Facilities (as opposed to Facilities available to him/her outside of WesternU)?	TREAT AS EMPLOYEE	GO TO #6
6. Will the individual perform research for a WesternU Faculty Member under an arrangement whereby the WesternU Faculty Member serves in a Supervisory capacity (i.e. the individual will be working under the direction of the WesternU University Faculty member)?	TREAT AS EMPLOYEE	GO TO #7
7. Will the Individual serve in an advisory or consulting capacity with a WesternU Faculty member or Director in a "Collaboration-Between-Equals" type arrangement?	TREAT AS INDEPENDENT CONTRACTOR	TREAT AS EMPLOYEE

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Prepared By: _____ Date: _____

College/Department: _____

Individual's Name: _____

Individual's Research Expertise: _____

Description of the Services offered: _____

_____

Describe how the Individual was recruited or identified for participation in the grant.	
Will WesternU provide any specific training to this Individual with respect to their involvement in the grant? If so, please specify.	
Will WesternU provide any specific instructions related to the manner or method that the Individual will completing the services involved in the grant? If so, please specify.	
Will the individual be expected to work a specific work schedule related to their involvement in the grant? If so, please specify.	
Is this individual currently involved in other research grants/projects with institutions outside of WesternU? If so, please specify.	
Will WesternU reimburse the Individual for business expenses? If so, please specify.	
Will WesternU provide tools/supplies for the job? If so, please specify.	
Will the Individual supervise any WesternU employees (whether administratively or the nature of their performance or productivity)? If so, please specify.	