

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
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**Agenda Number:**  
**Prepared on:** 9/14/06  
**Department Name:** Human Resources  
**Department No.:** 064  
**Agenda Date:** 10/03/06  
**Placement:** Departmental  
**Estimate Time:** 30 min  
**Continued Item:** NO  
**If Yes, date from:**

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**TO:** Board of Supervisors

**FROM:** Michael F. Brown, County Executive Officer  
Susan Paul, Assistant CEO/HR Director  
568-2817

**STAFF** Susan Paul, Assistant CEO/HR Director, 568-2817  
Theresa Duer, Deputy CEO/HR Director

**CONTACT:** 568-2822

**SUBJECT:** Policy -- Contractors on Payroll

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## **Recommendation(s):**

That the Board of Supervisors:

Approve a policy that sets forth employment and compensation criteria for contractors on payroll throughout the County, as shown on Attachment A.

## **Alignment with Board Strategic Plan:**

The recommendation(s) are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community.

## **Executive Summary and Discussion:**

In order to ensure countywide consistency regarding the use and compensation for Contractors on Payroll (COP's), the Board requested that the County Executive Officer (CEO) review this issue and return with Policy recommendations.

## Background:

In 1993, the Internal Revenue Service (IRS) began reviewing the use of the "independent contractor" designation by employers nationwide. As a result of this review, the County engaged Deloitte & Touche, an independent CPA firm to review the County's use of independent contractors. The purpose of the review was to ensure the County's compliance with IRS regulations.

Independent contractors are defined as independent business people who are hired to perform specific tasks, usually highly skilled or technical. Since independent contractors are in business for themselves, they are not the County's employees and therefore not eligible for unemployment, disability or workers compensation benefits. The County does not have to pay employer payroll taxes, provide workers compensation insurance and is typically not liable for the contractor's actions. The IRS has specific tests or rules that must be met in order to be considered an independent contractor.

IRS regulations do not permit an individual to be classified as an independent contractor if the employer maintains control over the contractor's performance, uses County owned tools and facilities and works hours that are determined by the County and not the contractor. If the employer retains these as well as other certain minimum controls over the contractor, the IRS will interpret the relationship as that of employer and employee, resulting in the necessity to pay all applicable taxes and benefits the County would normally pay to one of its employees.

As a result of the Deloitte and Touche review, the County established a "contractors on payroll" designation for individuals who were working at that time as independent contractors but did not meet the IRS requirements for designation as an independent contractor. General guidelines to determine an independent contractor versus contractor on payroll designation were also provided to County departments. The "contractor on payroll" designation provided the County with the operational flexibility to have individuals for specialized or limited assignments.

In 2003, the use of contractors on payroll was reviewed by the County's Internal Audit Division. In November 2003, Internal Audit prepared a report that included the conclusion that contractors on payroll were being used "judiciously, and in most cases appeared necessary to facilitate the cost-effective and timely provision of the myriad of governmental services to the citizenry".

A review of COP's was again undertaken in 2004, which included their usage, role and necessity in the organization. Policies were considered, but not formalized. As a result of the Board's request this year, the COP issue has been reviewed, and a countywide survey was conducted to facilitate this endeavor. Departments were asked to provide the following information:

- Usage of COP's
- Types of positions
- Time frames for usage
- Hourly rates
- Benefits
- Justification for usage

In general, the survey revealed the following:

- At the time the survey was conducted there were approximately 90 contractors on payroll.
- While contractors on payroll existed in many departments, including County Counsel, Planning and Development, Public Works and General Services, the greatest usage of COP's is in the medical professions, primarily doctors and medical specialists in ADMHS and Public

Health.

- That there were inconsistencies in practices regarding compensation and benefits for contractors on payroll between departments

The consistent conclusion of each of the reviews (1993, 2003, 2004, 2006) has been that the Contractors on Payroll designation is required to provide the County with the flexibility needed to meet operational demands and that establishing policy guidelines would facilitate consistency throughout the organization.

Attachment “A” to this document sets forth the definition of a contractor on payroll, employment and compensation criteria, the approval process for using COP’s and overall is designed to promote organizational consistency.

Recommendations

Establish a policy that sets forth employment and compensation criteria for COP’s throughout the County, as shown on Attachment “A”.

ATTACHMENT A  
POLICY RECOMMENDATION



**COUNTY OF SANTA BARBARA**

**CONTRACTOR ON PAYROLL POLICY**

September 2006

**PURPOSE**

The intent of this policy is to set forth the appropriate use and compensation of Contractors on Payroll.

**DEFINITION OF CONTRACTOR ON PAYROLL**

Contractors on Payroll (COP) are at-will employees of the County. COPs do not fill regular, allocated positions and do not meet the Internal Revenue Service (IRS) definition of an Independent Contractor.

**APPROPRIATE USE OF COPs**

The County may choose to hire a COP when:

1. There is a need for specialize work to be performed and/or when there is no existing job classification appropriate for the expected job.
2. The work cannot be performed by an independent contractor as determined by the IRS.
3. There is a temporary funding source for the work.
4. The work is sporadic and does not warrant a full or part-time regular position.

**COPs AS DISTINGUISHED FROM REGULAR EMPLOYEES AND INDEPENDENT CONTRACTORS**

**Regular employees** are hired into positions that are allocated to specific classifications and departments by the Board of Supervisors. Each position is assigned a classification, department, and bargaining unit. The salary and benefits assigned to the position are set forth in a Memorandum of Understanding or Resolution that has been adopted by the Board of Supervisors. Most regular employees are in the classified service (civil service); some are at-will.

**Independent Contractors** perform services for the County but are not employees of the County. Independent contractors customarily are engaged in an independent business, and they – not the County – retain the right to control the way the work is performed and where it is performed. In an independent contractor relationship, the County is usually concerned with the finished product, or the final outcome, of a particular job.

**COPs** are not regular employees in that they do not fill allocated positions and their salaries and benefits are not set forth in Memoranda of Understanding or resolution. COPs are at-will employees. COPs are not independent contractors because the County is involved in controlling the manner and means of work, including maintaining control over the employee’s performance, using County owned tools and facilities and working hours that are determined by the County.

## **COMPENSATION OF COPs**

### **1. Salary**

Salaries for COPs should be set after considering such factors as:

Compensation assigned to related, regular classifications  
Unique skills and licenses required for successful performance  
Market for similar positions in the labor area

Departments who wish to hire a COP must submit to CEO/HR:

Brief description of the work to be performed  
Salary recommendation and rationale

### **2. Retirement**

COPs who work at least 1040 (50% FTE) hours annually are mandatory members of the Retirement System in accordance with Government Code Section 31469, 31551, 31561.

### **3. Other Benefits**

COPs may receive up to 160 hours of leave time for every 2080 hours worked. COPs working less than 2080 hours would receive a prorated amount. Leave is subject to the approval of the COP’s supervisor.

### **4. COPs do not receive health insurance or other benefits typically provided to regular employees.**

## **ADDITIONAL REQUIREMENTS FOR REVIEW AND APPROVAL OF COPs**

Board letters and contracts must be reviewed and approved by CEO/HR prior to submission for Board of Supervisor’s approval and must meet the criteria set forth in this policy, i.e., compliance with compensation guidelines.

The contract must be approved by the Board of Supervisors prior to commencement of employment.