CHESTER PUBLIC UTILITY DISTRICT

Manual of Policies

Field	Value
POLICY TITLE	Worker Classification — Employee vs. Independent Contractor Determination
POLICY NUMBER	2310
STATUS	ADOPTED
ADOPTED	October 27, 2026 (Resolution No. 459)
LAST REVIEWED	New policy — adopted October 27, 2026
NEXT REVIEW DUE	At least annually, or upon change in the legal tests or reporting requirements
REVIEWED BY	General Manager
APPROVED BY	Board of Directors

1. PURPOSE

This policy establishes the District's standard procedure for determining, documenting, and periodically reassessing whether an individual performing work for the District is properly classified as a common-law employee or an independent contractor, before any such engagement begins, and for engagements already underway as described in Section 4. Misclassification exposes the District to retroactive CalPERS employer contribution liability, wage-and-hour claims, EDD reporting penalties, and other legal and financial risk. For the General Manager position specifically, the Board shall apply this policy's determination procedure each time the position is filled, regardless of whether the position is ultimately filled by a District employee or an independent contractor.

2. LEGAL FRAMEWORK

Three distinct legal requirements apply, and the District shall address each:

CalPERS / Public Employees' Retirement Law (PERL) purposes. California courts have held that PERL's definition of “employee” (Gov. Code § 20028(b)) incorporates the common-law control test, and that common-law employees of a contracting agency must be enrolled in CalPERS regardless of how the relationship is labeled or funded. (Metropolitan Water Dist. of So. Cal. v. Superior Court (2001) 92 Cal.App.4th 1112.) The controlling common-law test derives from S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341, and focuses principally on whether the District has the right to control the manner and means by which the work is performed, together with secondary factors including: who supplies tools, equipment, and workspace; whether the work is part of the District's regular business; whether the relationship is ongoing or project-based; how compensation is calculated and paid; whether the individual is engaged in a distinct, independently established trade or business; and how the parties themselves characterize the relationship.

EDD, Labor Commissioner, and workers' compensation purposes. California generally applies the three-part "ABC test" established in Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903 and codified at Labor Code §§ 2775–2787 (AB 5, as amended by AB 2257). Under the ABC test, a worker is presumed to be an employee unless the District can demonstrate all three of the following: (A) the worker is free from the District's control and direction in performing the work, both under the contract and in actual practice; (B) the worker performs work outside the District's usual course of business; and (C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. Numerous statutory exceptions apply the Borello test instead of the ABC test. The applicability of the Labor Code and IWC Wage Orders — including the ABC test — to public agency employers is unsettled; many Labor Code provisions do not apply to public employees. (Johnson v. Arvin-Edison Water Storage District (2009) 174 Cal.App.4th 729.) District Counsel shall confirm the extent to which this test applies to the District, and which test governs, for any purpose other than CalPERS/PERL determinations.

EDD independent contractor reporting. Under Unemployment Insurance Code § 1088.8, the District must report to the EDD, on Form DE 542, any independent contractor who is an individual or sole proprietor and to whom the District pays, or contracts to pay, $600 or more in a calendar year, within 20 days of the earlier of entering into the contract or making payments totaling $600. Independent contractors organized as a corporation, limited liability company, or partnership are not subject to this reporting requirement (EDD Form DE 542 Frequently Asked Questions, Q15). This reporting obligation, where it applies, is separate from and does not depend on the outcome of the CalPERS or ABC test analysis. District staff shall confirm the taxpayer identification number and entity type under which any contractor's Form 1099 is issued before determining whether DE 542 applies.

A favorable determination under one test does not establish a favorable determination under another, and none of the three requirements substitutes for the others. All must be separately addressed, using the checklist in Exhibit A.

3. APPLICABILITY

This policy applies to any individual, sole proprietorship, or business entity the District proposes to engage to perform services on a non-employee basis, including but not limited to General Manager or other management services, professional consulting services, and any position that has previously been, or could reasonably be, filled by a District employee. For the General Manager position, this policy applies regardless of whether the position is proposed to be filled on an employee or non-employee basis, so that the Board's staffing-model determination under Policy 2300.02 is made using the procedure set forth herein.

4. PROCEDURE

Engagements already underway. For any engagement underway as of the effective date of this policy, District staff shall complete the determination checklist in Exhibit A within 30 days of the effective date, and District Counsel shall complete its review under this Section within 15 business days thereafter. Completing the checklist for an engagement already underway is a documentation and compliance measure; it does not itself modify the terms of the existing agreement, which may only be modified as that agreement provides.

Before any new engagement begins, District staff shall complete the written determination checklist in Exhibit A, based on the actual proposed working arrangement (not solely the proposed contract language).

District Counsel shall review the completed checklist and the proposed agreement, and provide written confirmation of the recommended classification, within 5 business days of receiving the completed checklist and proposed agreement, and in all cases before the agreement is presented to the Board for adoption.

Any contract documenting an independent contractor engagement shall accurately describe the actual working arrangement — control over schedule and methods, ownership of tools and equipment, method and basis of payment, insurance obligations, and ability to serve other clients — and shall not include employment-specific terms (e.g., “salary,” “benefits,” “at the pleasure of the Board,” integration into personnel files) inconsistent with independent contractor status.

Within 20 days of entering into the agreement or making payments totaling $600, whichever is earlier, District staff shall determine whether Form DE 542 (Report of Independent Contractor(s)) is required under Section 2 above and, if so, shall file it with the EDD as required by Unemployment Insurance Code § 1088.8, and shall retain a copy of the filed report, or a written record of the determination that filing was not required, with the agreement.

Completed checklists, counsel confirmations, executed agreements, and DE 542 filings or non-filing determinations shall be filed with the Policy & Procedure Registry within 10 days of contract execution (or, for engagements already underway, within 10 days of completing the checklist under this Section), and retained per the District's records retention schedule.

Existing independent contractor engagements shall be reassessed under this policy at each contract renewal, and immediately upon any material change in the actual working arrangement.

5. RESPONSIBLE PARTIES

District staff, in coordination with the General Manager and District Counsel, are responsible for administering this policy, filing required EDD reports, and maintaining the determination checklist template.

General Manager's own engagement. Where the engagement being evaluated under this policy is that of the General Manager, the determination checklist shall instead be completed by a District staff member other than the General Manager, as designated by the Board Chair, together with the Board Clerk, without the General Manager's participation in its preparation, and any staff report presenting the determination to the Board shall be prepared and presented under the direction of the Board Chair or the Board Clerk rather than the General Manager. This limitation reflects Government Code § 1090's prohibition on a public officer or employee being financially interested in a contract made in their official capacity, and is intended to avoid any appearance that the General Manager participated in determining their own classification. Nothing in this Section resolves whether § 1090 applies to a contractor General Manager's own agreement; District Counsel shall advise on that question separately.

The Board retains sole authority to adopt any agreement classifying an individual as an independent contractor.

6. ADOPTION AND REVIEW

This policy shall be adopted, amended, and reviewed in accordance with Policy 1000 (Adoption & Amendment of Policies). This policy shall be reviewed at least annually, and updated to reflect any change in the legal tests or reporting requirements described in Section 2.

EXHIBIT A — Worker Classification Determination Checklist

Position / Engagement title: _____

Proposed individual or business entity:

_____

Prepared by: _____ Date: _____

(For the General Manager's own engagement, prepared per Section 5 above by a District staff member other than the General Manager, as designated by the Board Chair, together with the Board Clerk.)

Part 1 — CalPERS Common-Law Control Test (Borello factors)

Does the District have the right to control the manner and means of the work? ☐ Yes ☐ No

Who supplies tools, equipment, and workspace? _____

Is the work part of the District's regular business? ☐ Yes ☐ No

Is the relationship ongoing or project-based? ☐ Ongoing ☐ Project-based

How is compensation calculated and paid? _____

Is the worker engaged in a distinct, independently established trade or business? ☐ Yes ☐ No

How do the parties characterize the relationship? _____

Part 2 — ABC Test (EDD / Labor Commissioner / Workers' Comp purposes)

(A) Worker is free from District control and direction, in contract and in practice. ☐ Yes ☐ No

(B) Worker performs work outside the District's usual course of business. ☐ Yes ☐ No

(C) Worker is customarily engaged in an independently established trade, occupation, or business of the same nature. ☐ Yes ☐ No

All three (A), (B), and (C) must be "Yes" for independent contractor status to apply under the ABC test, unless a statutory exception applies (District Counsel to confirm).

Part 3 — Compliance Actions

Entity type of contractor (individual / sole proprietor / corporation / LLC / partnership):

_____

EDD Form DE 542 required? (individuals and sole proprietors only) ☐ Yes ☐ No, entity exempt

If required — filed? ☐ Yes, date: _____ ☐ Not yet due ☐ N/A, entity exempt

District Counsel review completed? ☐ Yes, by: _____ Date: _____

Recommended classification: ☐ Employee ☐ Independent Contractor

Board adoption date (if applicable): _____

Signature (preparer): _____ Date: _____

Signature (District Counsel): _____ Date: _____

Laws verified as of September 14, 2026. This information is for reference and educational purposes, not legal advice.