

LAYPERSONS: EMPLOYEE OR AN INDEPENDENT CONTRACTOR?

Numerous functions in the life of the church have been performed by volunteers. For a variety of reasons many key roles in the life of congregations have become paid positions. These positions, whether full-time or part-time need to be evaluated in terms of their relationship and accountability to the church.

Some churches have attempted to escape their reporting and withholding requirements by stating that the various persons that provide services for the church (i.e. custodian, secretary, organist, etc...) are “independent contractors” and not employees.

Making this determination should not be done lightly and should take into account the following excerpt from the Internal Revenue Service Regulations:

Generally the relationship of an employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the details and means by which that result is accomplished. That is, an employee is subject to the will of and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient that he/she has the right to do so. The right to discharge is also important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work, and not as to the means and methods of accomplishing the result, he is not an employee.

IR Reg. 31.3401(c) - 1(b)

In 1987, the Internal Revenue Service released Revenue Ruling 87-41 describing twenty factors to be considered in determining whether a worker is

an independent contractor of a common law employee. The summary of the issues in this ruling are as follow:

- 1) Instructions – requiring a worker to receive employer’s instructions.
- 2) Training – worker to receive employer’s training.
- 3) Integration – integration of a worker into business operations generally shows worker is subject to direction and control.
- 4) Services Rendered Personally – indicates employer is interested in methods as well as results
- 5) Hiring, Supervising and Paying Assistants – employers generally show control over the worker on the job.
- 6) Continuing Relationships – long time relationships are characteristic of employer – employee.
- 7) Set Hours of Work – a factor indicating control over an employee
- 8) Full-Time Required – another factor indicating control.
- 9) Doing Work on the Employer’s Premises – a factor indicating control over the place of work.
- 10) Order of Sequence set – employer has right to establish schedules and routines.
- 11) Oral or Written Reports – regular reports indicate control.
- 12) Payment by Hour, Week, Month – employees generally are; self-employed usually are paid by the job.
- 13) Payment of Business/Travel expenses – indicates employee’s relationship if employer has right to direct the worker’s business activities.

- 14) Furnishing Tools and Materials – tends to show an employer / employee relationship.
- 15) Significant Investment – a worker invests in facilities or equipment that he uses in performing services and that are not typically maintained by employees.
- 16) Realization of Profit or Loss – worker is subject to a real risk of economic loss due to significant investments or a bona-fide liability for other's expenses.
- 17) Working for More Than One Firm at a Time – generally indicates an independent contractor.
- 18) Making Services Available to the General Public – generally indicates an independent contractor.
- 19) Right to Discharge – indicates an employer / employee relationship.
- 20) Right to Terminate – indicates an employer / employee relationship.

In evaluating these numerous tests of employee status, it is the position of the Internal revenue Service that in most cases an individual would be considered to be an employee rather than an independent contractor.

Though this does subject a church to another layer of reporting and filing requirements for its lay employees, this is a far more responsible position. Generally it will be to the advantage of the lay employee as it will provide security coverage as well as some tax advantages.

Failure to properly classify an individual (layperson) as an employee can have severe consequences to the church. There is a potential for the church to be assessed a penalty and interest on amounts not withheld.

If the individual did not report the income the church may also be liable for any unpaid taxes.

Similar penalties may apply at the state and local level as well.

SEVEN FACTOR TEST

(When is a Worker an Employee or Self-Employed?)

The Tax Court in *Weber vs. Commissioner*, 103 T.C._ (1994) did not refer to the 20-criteria test announced by the Internal Revenue Service in 1987. The new test requires consideration of the following 7 factors:

1. The degree of control exercised by the employer over the details of the work
2. Which party invests in the facilities used in the work
3. The opportunity of the individual for profit or loss
4. Whether or not the employer has the right to discharge the individual
5. Whether the work is part of the employer's regular business
6. The Permanency of the relationship
7. The relationship the parties believe they are creating

There are two additional points the court made that should be considered in applying this test:

- "No one factor dictates the outcome. Rather, we must look at all the facts and circumstances of each case."
- "The threshold level of control necessary to find employee status is generally lower when applied to professional services than when applied to nonprofessional services."

In summary, very few church workers will qualify as self-employed, especially if the church is their only employer. A true independent contractor should have a company, tax numbers and be able to pass the above 7-factor test. A contract with the church is essential.

Workers Compensation

Employers of 3 or more full or part-time employees are required to have coverage. See "Employee or Independent Contractor?" attached.

Coverage for illness, injury and disability. Provision for a death benefit and rehabilitation of disabled workers.

Workers' Compensation Insurance coverage carried on all Conference Center personnel, District Superintendents and all other employees of the conference.

Consider that any person employed by the church, even in casual work relationships has a right to make a claim against the church for work related injuries. For example, you may agree to let a needy person do a minimal task in exchange for a small amount of money. That person may be injured and covered by the law at your expense.

Consider that any person subcontracting or considered a contractor of the church must provide a Workers' Compensation Certificate of Insurance as evidence to the church the coverage is effective or the church becomes responsible for the employees.

Having Workers' Compensation coverage eliminates the legal responsibility and softens the moral responsibility the church may have toward persons injured on site.

The conference insurance agent, Bob Boyd of First Charter Insurance regarding Workers' Compensation Coverage:

"anyone that qualifies for coverage under the law is making an error not to be covered under the law."

"Coverage is easily available through the agent that provides the property/liability coverage for the church"

- Boyd / Oakley / letter / 1.11.95