

Independent Contractor or Employee?



That is the question!

The cost of providing benefits for health insurance, pensions, and workers' compensation insurance continue to be on the rise. In response, ministries may consider hiring an independent contractor instead of an employee, but it is critical they understand the differences between the two before making this decision.

According to the Internal Revenue Service (IRS), "The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done." If a worker performs services

that are controlled by your ministry (what will be done and how it will be done), they would be considered an employee.

Independent contractors, such as a business used to repair a roof, generally work for many people, provide their own employees, their own tools, and direct their work in accordance with the terms of the contract agreement. Since they are independent in their work, a church generally should not have to withhold the employee's portion of taxes, pay any taxes on payments made, or provide workers' compensation coverage to independent contractors.

If a worker performs services that are controlled by your ministry, they should be considered an employee. An example could be someone who performs regular maintenance services at the church, especially if they are relying on tools and supplies owned by the church

to perform the work and being directed in what will be done and how it will be done. Generally, ministries should withhold the employee's portion of taxes, pay any taxes, as well as provide workers' compensation coverage for workers who are classified as employees.



Workers' compensation is a no-fault coverage, and it is regulated by the state. Each state has its own requirements and penalties, and nearly every state requires employers to carry workers' compensation insurance. According to the IRS "Each state also has tests to determine a person's status

under workers' compensation and unemployment insurance laws. The economic realities test used in most states makes it harder to classify a worker as an independent contractor because, in addition to the degree of control test, it considers the degree the worker is economically dependent upon the business."

It is important for churches to note there may also be consequences associated with treating an employee as an independent contractor. If a ministry classifies an employee as an independent contractor and there is no reasonable basis for doing so, they may be held liable for employment taxes for that worker. Additionally, if workers' compensation insurance is not purchased and the employee sustains an injury on the job, the employee's workers' compensation claim could be charged to the church for the cost of any insurance coverage and the actual cost of the worker's claim.

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Since most states require ministries to purchase workers' compensation insurance for their employees, Insurance Board offers churches workers' compensation coverage on a request-basis for employment-related injuries. Please contact your local Insurance Board agent for more information.

If your church is unsure whether an individual should be classified as an independent contractor or employee, guessing could end up causing a lot of headaches and more time away from serving your ministry. The Insurance Board encourages ministries to consult with legal counsel for guidance or clarification.

Source : <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee>

- The Fair Labor Standard Act (FLSA) does not define independent contractor.
- Federal courts have held that independent contractors are not employees.
- The US Supreme Court has indicated that there is no single rule or test for determining whether an individual is an independent contractor or employee.
- The chart should help provide guidance, but seek legal counsel for certainty.
- **Department of Labor** <https://www.dol.gov/>
- **Occupational Safety and Health Administration** <https://www.osha.gov/>.
- Graphic from: <https://www.dol.gov/agencies/whd/flsa/misclassification>

	EMPLOYEE	OR	INDEPENDENT CONTRACTOR
	Working for someone else's business		Running their own business
	Paid hourly, salary, or by piece rate		Paid upon completion of project
	Uses employer's materials, tools and equipment		Provides own materials, tools and equipment
	Typically works for one employer		Works with multiple clients
	Continuing relationship with the employer		Temporary relationship until project completed
	Employer decides when and how the work will be performed		Decides when and how they will perform the work
	Employer assigns the work to be performed		Decides what work they will do