

Independent Contractor vs. Employee

The IRS has put increasing emphasis into reviewing an organization's independent contractors to see if they are more correctly classified as employees. Of course, if an independent contractor gets reclassified by the IRS, the organization under audit is responsible for back payroll taxes, interest and penalties.

The basic difference is that employers generally control when, where and how the work gets done by their employees, while contractors, in their arrangements, have more autonomy and control over when, where and how the work gets done for their clients. Certain attributes tend to make an arrangement look a certain way. One-client contractors tend to look like employees, particularly if they are working full time. Other strong indicators of employee status include the employer providing dedicated office space, equipment, supplies, etc.

The checklist we have provided will help you review a particular arrangement and will permit you to document that a reasonable decision on status has been made. It is always advisable to consult with an employment law attorney regarding the classification.

Employee/Term Employee vs. Independent Contractor Checklist¹

Utilization	Employee/ Term Employee	Independent Contractor
1. The congregation/church entity will control how, when and where the work is performed	Yes	No
2. The congregation/church entity will provide training.	Yes	No
3. The individual's work will be integrated into the overall business operations of the congregation/church entity.	Yes	No
4. The services will be rendered personally by the individual	Yes	No
5. The individual will hire employees, assistants or subcontractors	No	Yes
6. The congregation/church entity will hire, pay and supervise assistants.	Yes	No
7. The relationship between the congregation/church entity and individual will have a definite term	No	Yes
8. The congregation/church entity will determine the number of hours to be worked.	Yes	No
9. Individual will provide services on a full-time basis.	Yes	No
10. Services to be rendered require specialized skills.	No	Yes

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11. The congregation/church entity will assign additional projects to the individual.	Yes	No
12. The work will be done exclusively on the congregation/church entity premises.	Yes	No
13. The congregation/church entity will determine the order or sequence of work to be performed.	Yes	No
14. The congregation/church entity will require regular oral or written reports.	Yes	No
15. The congregation/church entity will pay hourly, weekly or monthly.	Yes	No
16. The congregation/church entity will pay a commission or on a per-assignment basis.	No	Yes
17. The congregation/church entity will pay business and travel expenses	Yes	No
18. The congregation/church entity will furnish necessary tools, equipment and materials.	Yes	No
19. Individual will invest in own facilities and equipment.	No	Yes
20. Individual has independent opportunity for profit or loss.	No	Yes
21. Individual will work for more than one principal at a time.	No	Yes
22. Individual's services are available to the general public.	No	Yes
23. The congregation/church entity will provide employee benefits.	Yes	No
24. The congregation/church entity will deduct for withholding tax.	Yes	No

¹ It is important to note that no single factor may be outcome determinative on the issue of independent contractor and employee. The factors included herein tend to be indicative to one or the other. Some factors clearly will carry more weight than others. For example, the fact that the congregation/church entity controls the number of hours worked and how the work is done is more significant than the fact that the congregation/church entity requires written report or that the work is done exclusively on the congregation/church entity premises.

Related links on IRS.gov

Independent Contractor (Self-Employed) or Employee?

<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

Employer's Supplemental Tax Guide (Publication 15-A)

<http://www.irs.gov/pub/irs-pdf/p15a.pdf>

Exempt Organizations: Independent Contractors vs. Employees

<https://www.irs.gov/charities-non-profits/employment-taxes-for-exempt-organizations>