

EMPLOYEE VS. INDEPENDENT CONTRACTOR

The church must carefully determine whether a person is an "**employee**" or an "**independent contractor**." As an employee, the person has FICA, federal and state income taxes withheld; whereas an independent contractor would have nothing withheld, but would be liable for self-employment tax at the rate of 15.3%. The church **faces serious liability for taxes, penalties and interest** if a person was treated as an independent contractor when in fact the person should have been an employee.

There are several factors the courts and the IRS look to in determining whether a worker is an "independent contractor" or an "employee." The following represent a sampling of circumstances usually considered by the IRS when determining proper classifications:

CHURCH EMPLOYEE

No risk of profit or loss

Dependent on church for work

Employee has minimal authority — at discretion of employer

Services performed for only one employer

Work integrated into employer's operations

Work controlled and directed by employer

Employer provides work place

Employer sets work schedule

Employer provides tools, materials, and pays expenses

Employer provides fringe benefits

Employer pays hourly wage or salary

On-going relationship with employer

INDEPENDENT CONTRACTOR

Risk of profit or loss

Can generate business independently

Delegates authority, hires, fires, and sets pay

Services performed for several employers

Services are independent of employer's operations

Work not supervised or controlled by employer

Provides own work place

Determines own work schedule

Provides own tools, materials, and pays own expenses

No fringe benefits

Receives lump sum payment

Relationship with employer terminates at end of job or contract

Under Revenue Ruling #87-41, the IRS has developed a 20-item checklist helpful in determining whether an individual is an employee or independent contractor. These should be reviewed very carefully to determine the status of each individual.