

Employee vs. Independent Subcontractor

This is an area that is very misunderstood and therefore is a place where many, many mistakes are made. Let me warn you, however, if the IRS comes and looks at your employee records and then asks for verification of your subcontractors, it will be very expensive to your church if any of the subcontractors are deemed employees by the IRS. Issues like workers' compensation insurance and employer taxes are two of the larger issues. The Internal Revenue Service provides the following general rules: *An individual is an independent subcontractor if the payer has the right to control or direct ONLY the RESULT of the work and not what will be done or how it will be done. The earnings of a person who is working as an independent subcontractor are subject to self-employment tax. You are not an independent subcontractor if you perform services that can be controlled by an employer. This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.*

Common Law Rules

- Facts that provide evidence of the degree of control and independence fall into three separate categories:
1. **Behavioral**: Does the church control or have the right to control what the worker does and how the worker does his or her job?
 2. **Financial**: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
 3. **Type of Relationship**: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

All facts and circumstances of your situation must be examined to determine whether a worker is an employee or subcontractor. No single factor provides the answer. However, what should be apparent is only rarely will a non-clergy worker in and around a church meet the requirements to be treated as an independent contractor. Make sure, if you enter a relationship with a subcontractor, that they provide you with proof of general liability insurance and their EIN (employer identification number) or SSN (social security number).

What you must provide to Independent Subcontractors

- IRS Form 1099 for services of \$600 or more per calendar year.

Clergy, on the other hand,

Clergy may be treated as either employees or independent subcontractors. As an employee, clergy should receive a Form W-2 at year end or as an independent subcontractor, they should receive a 1099. However, if the church has other staff members, the IRS would most likely consider the clergy as an employee and expect to see a W-2. If you are not sure, it is best to consult a professional.

If you have any suggestions or questions for an upcoming article, please contact Tammie Wisniewski at tammie@psec.org or call the conference office at 484-949-8774 X304