



Diocese of
OWENSBORO

EMPLOYEE VERSUS A NON-EMPLOYEE

When a parish makes a new hire, the first determination that must be made is whether that new hire is an employee or a non-employee (i.e. independent contractor). The IRS has promulgated regulations that are to be used to make a proper determination. While the regulations do not provide an absolutely clear distinction between the two statuses, they do provide direction to make a proper and defensible determination. Whether a worker is an employee or an independent contractor depends upon the amount of control and direction the employer can exert over the individual performing the service(s). If the parish has difficulty in, or needs assistance with, making a determination the Diocesan Office of Administration should be consulted.

MAKING A PROPER DETERMINATION

Facts that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral: Does the parish control or have the right to control what the worker does and how the worker performs his/her job?
2. Financial: Are the business aspects of the worker's job controlled by the parish? These include matters such as how the worker is paid, whether the expenses are reimbursed, who provides tools/supplies, etc.?
3. Type of Relationship: Are there written contracts or employee-type benefits provided; i.e. pension plan, insurance, vacation pay, etc.? Will the relationship continue beyond the completion of one project? Is the work performed a key aspect of the business?

Parishes must carefully weigh all of the above factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors may indicate just the opposite. There is no 'magic' or set number that 'makes' the worker an employee or independent contractor and no single factor can make the determination. The key is to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in making the determination.

CONSEQUENCES OF AN IMPROPER DETERMINATION

If a parish treats an employee as an independent contractor and has no reasonable basis for doing so, the parish can be held liable for all employment taxes for that worker plus interest and penalties. See Internal Revenue Code §3509 for more information.

Payment for services of employees vs. independent contractors

The method used to compensate employees versus independent contractors is significant. As mentioned above, improper classification can have a negative financial impact on the parish.

Employees are subject to income and social security tax withholding, employer matching of social security tax as well as other payroll taxes and may be, depending on their eligibility, entitled to benefits. Employees must be paid through the Paycor payroll system.

See: [Policy on Diocesan Standardized Payroll System](#)

Independent contractors are not subject to tax withholdings or employment taxes. However, their payments must be reported to the IRS on a Form 1099-MISC if the total amount paid to them for the calendar year exceeds \$600. It is the parish's responsibility to ensure that all independent contractors that are paid in excess of the \$600 limit are properly reported to the IRS through a Form 1099.

Lastly, the table on the following page may be helpful to a parish to determine the proper status of a worker: employee or independent contractor.

DETERMINATION TEST QUESTIONS

| EMPLOYEE vs. NON-EMPLOYEE NO. | CONDITION | EMPLOYEE | INDEPENDENT CONTRACTOR |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------|
| 1. | Who instructs as to when, where and how the work/service is performed? | Parish | Worker |
| 2. | Training is provided by? | Parish | Worker |
| 3. | Do services need to be integrated into parish operations? | Yes | No |
| 4. | If work/services must be performed only by worker, is there a presumption that you are highly interested in methods used to accomplish the work? | Yes | No or slight |
| 5. | Who hires, supervises and pays assistants, if any? | Parish | Worker |
| 6. | Is work/services performed at frequently recurring, though irregular, intervals? | Yes | No |
| 7. | Are set hours of work established? | Yes | No |
| 8. | Is the worker substantially full-time? | Yes | No |
| 9. | Where is work/service performed? | Parish | Elsewhere |
| 10. | Who controls the order of sequence of the work/services? | Parish | Worker |
| 11. | Are regular or written reports required from worker? | Yes | No |
| 12. | Is payment by the hour, week, etc. rather than by the job? | Yes | No |
| 13. | Are worker's travel and work-related expenses paid by the parish? | Yes | No |
| 14. | Who provides the tools, materials and equipment? | Parish | Worker |
| 15. | Does worker have an investment in tools and/or equipment needed to perform the | No | Yes |

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|-----|-------------------------------------------------------------------------------------------------------------|-----|-----|
| 16. | work/services? Can worker realize a profit/loss on the work/services? | No | Yes |
| 17. | Does worker perform more than <i>deminimis</i> work/service for more than one customer or client at a time? | No | Yes |
| 18. | Are worker's services available to the general public on a regular and consistent basis? | No | Yes |
| 19. | Does the parish have a right to discharge the worker without regard to honoring provisions of the contract? | Yes | No |
| 20. | Can the worker terminate the relationship at will without incurring liability? | Yes | No |