



MMS Position Paper: Independent Contractor

MMS position papers are a compilation of our staff's research, education, training classes and seminars attended, 20 years field experience and interpretation of current laws as we understand them. The information contained in this paper is not legal advice and is intended to be used as general information to help your organization formulate your organization's guidelines. It is understood that your organization is legally responsible for all policies and procedures, and their legal basis.

It should be noted that these guidelines do not apply to pastors who are dual filers, see position paper of "pastors as dual filers."

Application: Many churches like to classify people as independent contractors (custodians, nursery workers, summer help etc) as opposed to employees to avoid paying the employer side of social security tax, reduce their payroll processing expenses and they believe it will save the church money on worker's compensation insurance. The IRS strongly prefers to have most people classified as employees. The following is an attempt to clarify the issues.

In order for a person to work at a church legally as an independent contractor, we believe it is prudent to consider the following guidelines:

- 1) The person (company) must send an invoice for services rendered to the church and it must be paid from accounts payable.
- 2) It cannot be their only source of income.
- 3) The church cannot substantially direct the person's duties; the church can only give them overall tasks to complete.
- 4) They cannot have an office at the church that is their primary office.
- 5) The church cannot control or set their hours that they work.
- 6) Since their "company" provides the service, they can send anyone to do the job.

- 7) The church needs to have a written contract in place including cost, delivery of Services, duration (i.e. six months, one year, etc.) and a termination clause.
- 8) They cannot participate in any employee benefits plans (insurance, retirement plans, etc).
- 9) The contractor must provide annual proof of worker's comp and liability insurance naming the church as additionally insured or the church could be held liable in the event of a claim
- 10) The church must issue a 1099 at the end of the year for all contract wages paid if the total amount for the year exceeds \$600.00. We strongly recommend that no payments are made until an accurate and fully completed W-9 is completed by the contractor and on file at the church.

Advantages for the church include:

- 1) No longer have to pay matching employer FICA (7.65%)
- 2) Based on the wording of the termination clause, it could be easier to terminate them

We recommend against the use of independent contractors (that regularly work at the church) because we believe it can create the following problems for the church:

- 1) Less control over the position
- 2) Leaves the church open to an IRS challenge, which the church only has a 50/50 chance of defending, not to mention the cost and hassle of litigation
- 3) In the event of insurance claims, the church may encounter issues with:
 - a. Worker's compensation coverage
 - b. Liability insurance coverage
 - c. Sexual misconduct coverage
- 4) Church is open to contract disputes with the independent contractor
- 5) Based on how the individual/company is filing their taxes, it could bring an unwanted tax audit to the church

Conclusion: We do not see enough cost saving advantages for the church to move in this direction. It creates unnecessary red flags for the IRS. The other looming question is, why is this

such an important issue for such a small incremental, (if any) tax break for the individual? Because the independent contractor will have to pay employer FICA, we don't see any large tax advantage for this shift. They can claim mileage and some home office expense (maybe) but it just does not amount to enough to place the church at risk.



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