

Miller Management position papers are a compilation of our staff's research, education, training classes and seminars attended, over 30 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 ministers who are dual-status filers, see our position paper of "Ministerial Dual Status Employment."
(GoodFaithAccounting.com)

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.

As of January 9, 2024, the [Fair Labor Standards Act](#) issued a ruling rescinding the 2021 Independent Contractor Rule and replacing it with guidance for how to more accurately classify an employee or independent contractor. This final rule affirms that a worker is not an independent contractor if they are economically dependent on an employer for work; therefore, an economic reality test uses multiple factors to determine if an employment relationship exists under the FLSA. The economic reality test decides if a worker is economically dependent on the employer for work or if they are in business for themselves. The totality of all the circumstances of the working relationship should be considered when making the assessment.

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

- 1) The person (company) has opportunity for profit or loss depending on their managerial skill through their own independent effort and decision making. The contractor negotiates their pay, decides which work to accept or decline, purchases their own materials and/or equipment and engages in marketing or advertising to expand their business.
- 2) The contractor makes investments that are capital or entrepreneurial in nature that support the growth of the business, such as renting their own space, purchasing their own tools/resources, etc., which allow the worker to do more work and find new clients.
- 3) The contractor provides work that is sporadic, or project based with a fixed ending

date (or regularly occurring fixed periods of work) where the worker may make a business decision to take on multiple different jobs.

- 4) The church does not maintain control of various aspects of the work, such as scheduling, prices, pay rates, supervision of the work, and how the work is completed and by whom within the company/contract worker.
- 5) A contractor's duties are not central to the church's principal business.
- 6) A contractor uses their own specialized skills in connection with business initiative to perform the work and does not rely on the church to provide training for the job.

If it is difficult to determine whether a person falls into the category of employee or the category of contractor, 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.
- 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) Based on how the individual/company is filing their taxes, it could bring an unwanted tax audit to the church.
- 5) Potential lawsuits could be filed against the church if a worker is classified incorrectly, especially if the worker should be an employee and labor standards are in violation of the Fair Labor Standards Act.

If you want the IRS to determine whether or not a worker is an employee, file [Form SS-8](#), Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS.