

Classifying Workers: Employee vs. Independent Contractor

1. Purpose: This paper outlines guidelines to parishes and institutions within the Diocese of Bismarck for determining whether paid workers are to be classified as individual independent contractors or church employees. Proper classification of workers is important because substantial penalties can be assessed to the parish/institution for treating workers as contractors if they are later reclassified as employees by the IRS.

2. Reference: -IRS website: <https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation> and <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined>

3. Definition:

a. **Employee:** Anyone who receives pay for performing services is an employee if the parish/institution can control what work will be done by the worker and how it will be done. Generally, the following factors indicate "employee" status; however, not all factors need be present:

- 1) Worker is required to follow an employer's instructions regarding when, where, and how to work.
- 2) Worker receives on-the-job training from an experienced employee.
- 3) Worker is expected to perform services personally and not use a substitute.
- 4) Worker has a continuing working relationship with the employer.
- 5) Employer establishes set hours of work.
- 6) The work is done on the employer's premises.
- 7) Worker must submit regular oral or written reports to the employer.
- 8) Employer furnishes worker's tools, supplies and equipment.
- 9) Worker does not advertise his or her services to the general public or work for other employers.

b. **Independent Contractor:** Service vendors/workers who operate an independent trade, business, or profession in which they offer their services to the general public and are not subject the factors listed above.

4. Background: An employer must withhold income taxes and pay Social Security and Medicare taxes on wages paid to an employee. Employers normally do not have to withhold or pay taxes on payments made to independent contractors. As such, independent contractors are subject to a higher tax rate. In response to employers misclassifying employees as contractors to save money, Federal law was established to protect workers. **If in doubt, parishes/institutions should treat a worker as an employee versus and independent contractor.**

5. Procedures:

- 1) Using the factors outlined above a parish/institution should determine if a worker is an employee or an independent contractor.
- 2) Employees should receive a criminal background check be added to payroll in accordance with proper Diocesan policies. Independent Contractors will provide W-9 Form and complete the attached Independent Contractor Service Agreement.
- 3) If a worker meets the criteria to be classified as and employee but requests to be treated as an independent contractor, an Independent Contractor Service Agreement and W-9 Form needs to be completed.

6. Proponent: Questions regarding these guidelines should be directed to the Office of Parish Resources of the Diocese of Bismarck.

INDEPENDENT CONTRACTOR SERVICE AGREEMENT

Parish: _____

Address: _____

Contractor: _____

Address: _____

SSN: _____

Term: This Contract is effective ___/___/___ and will continue until ___/___/___.
Notwithstanding any other provisions of this Contract, either party hereto may terminate this Contract at any time by giving 14 days written notice to the other party.

Services to be rendered: _____

Payment: _____

1. The relationship between Parish and Contractor is that of independent contractor. Contractor agrees to provide workers' compensation insurance for Contractor and its employees required by law.
2. Parish agrees to defend, protect, indemnify and hold harmless Contractor against and from all claims arising from the negligence or fault of Parish or any of its agents, officers, employees or volunteers for claims arising from this Contract and arising from Parish negligence.
3. Contractor agrees to defend, protect, indemnify and hold harmless Parish against and from all claims arising from the negligence or fault of Contractor or any of its agents, officers, employees or volunteers for claims arising from the above identified Contract and arising from Contractor negligence.
4. Parish and Contractor agree that this document overrides any insurance or indemnification language in conflict to an existing contract whether or not the existing contract has been previously signed or will be signed in the future.

Parish:

(sign)

Date: _____

Contractor:

(sign)

Date: _____