

Whether a worker is an "employee" or an "independent contractor" is critical when it comes to such important issues as pension eligibility, state-mandated benefits, wage and hour law, and many other matters. Because there is no bright line test for whether a worker is an "employee" or an "independent contractor," the classification of workers is an ever-intensifying battleground between the IRS and employer. "Misclassified" employees cost the government \$2 billion a year in lost revenue. Consequently, the IRS aggressively re-characterizes workers as employees and assesses back taxes, penalties, and interest against employers who have misclassified their workers.

In an effort to provide safe guidelines to conference employers, the conference has adopted the following policy for employing independent contractors.

**Independent Contractors Should Meet the Following Requirements:**

1. Provide evidence that they have an established company and pay self-employment taxes (i.e. business license).
2. Provide proof that they provide the same services to other organizations.
3. Provide their own equipment and supplies.
4. Provide a photocopy of their Liability and Workers' Compensation insurance policies.\*
5. Must not be controlled schedule-wise or in methods of performance by the organization for which they work.

**Responsibilities of Employers Regarding Employees/Independent Contractors:**

**For Employees:** It is the responsibility of the employer to:

1. Pay the employer's share of FICA and deduct the employee's portion of FICA.
2. Withhold federal and state taxes from wages.
3. Remit taxes to the Internal Revenue Service as required.
4. Report new hires to the appropriate state agency.
5. Provide W-2 form to employee/IRS at year end.
6. Obtain and keep on file the INS Employment Eligibility form (I-9).
7. Comply with wage and hour regulations.

**For Independent Contractors:** An employer must:

1. Provide a 1099-MISC form to the contractor and the IRS for amount(s) paid in excess of six hundred dollars (\$600) annually to the contractor. (The contractor must provide a Social Security number for inclusion on this form.)
2. Deduct a twenty-percent (20%) backup tax from payments to contractors who do not provide a Social Security number. (An independent contractor is responsible for reporting to the Internal Revenue Service applicable self-employment taxes and for providing their own Workers' Compensation insurance.)

**Please note:** The actual work conditions, not the title "employee" or "independent contractor", determine the status of the worker. As a general rule, courts and the IRS disfavor independent contractor status, preferring to provide a worker with all the benefits of an employee.

**\*Worker Compensation and Liability Insurance:** The Conference has adopted a strict policy that independent contractors hired by churches and schools MUST carry Liability Insurance of at least \$500,000. In addition they must carry Workers' Compensation insurance as required by law. (Maryland requires WC coverage if contractor has 1 or more employees; Virginia requires WC coverage if contractor has 3 or more employees.) **Liability Insurance** protects against the injuring of someone not connected to the contractor. **Workers' Compensation Insurance** provides for the medical care and lost wages of the contractor's employees in the event of an injury while on the job.