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## IRS, Pub 15

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### 2. Who Are Employees?

Generally, employees are defined either under common law or under statutes for certain situations. See Pub. 15-A for details on statutory employees and nonemployees.

**Employee status under common law.** Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. See Pub. 15-A for more information on how to determine whether an individual providing services is an independent contractor or an employee.

Generally, people in business for themselves aren't employees. For example, doctors, lawyers, veterinarians, and others in an independent trade in which they offer their services to the public are usually not employees. If the business is incorporated, corporate officers who work in the business are employees of the corporation.

If an employer-employee relationship exists, it doesn't matter what it is called. The employee may be called an agent or independent contractor. It also doesn't matter how payments are measured or paid, what they're called, or if the employee works full or part time.

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## IRS, Pub 15A

### Independent Contractors

People such as doctors, veterinarians, and auctioneers who work in an independent trade, business, or profession in which they offer their services to the public, are generally not employees. However, whether such people are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

### Common-Law Employees

Under common-law rules, anyone who performs services for you is generally your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. For a discussion of facts that indicate whether an individual providing services is an independent contractor or employee, see [section 2](#).

If you have an employer-employee relationship, it makes no difference how it is labeled. The substance of the relationship, not the label, governs the worker's status. It doesn't matter whether the individual is employed full time or part time.

For employment tax purposes, no distinction is made between classes of employees. Superintendents, managers, and other supervisory personnel are all employees. An officer of a corporation is generally an employee; however, an officer who performs no services or only minor services, and neither receives nor is entitled to receive any pay, isn't considered an employee. A director of a corporation isn't an employee with respect to services performed as a director.

You generally have to withhold and pay income, social security, and Medicare taxes on wages that you pay to common-law employees. However, the wages of certain employees may be exempt from one or more of these taxes. See [Employees of Exempt Organizations](#) (section 3) and [Religious Exemptions and Special Rules for Ministers](#) (section 4).

**Additional information.** For more information about the treatment of special types of employment, the treatment of special types of payments, and similar subjects, see Pub. 15 or Pub. 51, Agricultural Employer's Tax Guide.

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## 2. Employee or Independent Contractor?

An employer must generally withhold federal income taxes, withhold and pay over social security and Medicare taxes, and pay unemployment tax on wages paid to an employee. An employer doesn't generally have to withhold or pay over any federal taxes on payments to independent contractors.

### Common-Law Rules

To determine whether an individual is an employee or an independent contractor under the common-law, the relationship of the worker and the business must be examined. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties. These facts are discussed next.

**Behavioral control.** Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

**Instructions that the business gives to the worker.**

An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.
- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow.

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

**Training that the business gives to the worker.** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

**Financial control.** Facts that show whether the business has a right to control the business aspects of the worker's job include:

**The extent to which the worker has unreimbursed business expenses.** Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their employer.

**The extent of the worker's investment.** An independent contractor often has a significant investment in the facilities or tools he or she uses in performing services for someone else. However, a significant investment isn't necessary for independent contractor status.

**The extent to which the worker makes his or her services available to the relevant market.** An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

**How the business pays the worker.** An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is often paid a flat fee or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

**The extent to which the worker can realize a profit or loss.** An independent contractor can make a profit or loss.

**Type of relationship.** Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether or not the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- **The permanency of the relationship.** If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.
- **The extent to which services performed by the worker are a key aspect of the regular business of the company.** If a worker provides services that are a key aspect of your regular business activity, it is more likely that you'll have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or

direct that work. This would indicate an employer-employee relationship.

## V. EMPLOYMENT PRACTICES

- A. Job Description - Each full-time or part-time regular employee (not temporary) shall be provided with a written job description defining the duties, expectations, and responsibilities of the job.
- B. Performance Review - Each full-time or part-time regular employee (not temporary) shall receive a written performance review and evaluation, based on the written job description at least once per year. In the case where the employee job performance is identified as being less than satisfactory, additional and more frequent evaluations and discussions shall be conducted identifying areas of required improvement, a plan for corrective action and a discussion of potential consequences if the deficiencies are not corrected in a timely manner. Either party may request that a neutral third party be present during such a review to act as a witness. The witness must be agreed upon by both parties. For Performance Review of Minister, please refer to Section: III. DUTIES: C. PERFORMANCE EVALUATION AND TERMINATION OF MINISTER'S EMPLOYMENT.
- C. Employment Status – Each full-time or part-time employee who has regular or expected hours of working at the church, such as staff meetings and/or the Sunday morning celebration service, and whose work can be or is controlled by the Senior Minister or delegate, shall be considered a common law employee, per the IRS tax Code as documented in IRS Publication 15, Section 2. “Who are Employees?”. This employment status requires Unity of Bellevue to withhold all appropriate taxes, make appropriate payments, and report taxes to the IRS.

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## UOB, Employee Handbook

### *Types of positions*

An employee may be hired to fill one of four types of positions:

- **Regular full-time employees** are those who work a standard forty (40) hour work week on a permanent, continuous basis. Employees in this category are eligible for all benefit programs offered by Unity of Bellevue.
- **Temporary full-time employees** may be hired to perform a job or to work on a project that has a limited duration. Typically, this happens in the event of a special project, special time of year, abnormal workload, or emergency. Employees in this category are not eligible for medical benefits, nor can they earn or accrue any leave, such as PTO or sick leave.
- **Regular part-time employees** may be hired to perform a job or to work on a project for less than the standard forty (40) hour work week for an indefinite period of time. Employees in this category who work at least 20 hours per week are eligible for medical benefits and PTO on a prorated basis (e.g., a 20 hour per week regular employee receives medical benefits at a 50% rate; a 30 hour per week regular employee accrues PTO at a 75% rate) and are eligible for other benefits as required by Washington State law.
- **Temporary part-time employees** may be hired to perform a job or to work on a project for a short period of time, normally not more than three (3) months. Employees in this category are not eligible for medical benefits, nor can they earn or accrue any leave, such as PTO or sick leave, other than as required by Washington State law.

There may be some staff workers who are volunteers and do not receive pay or benefits, but who are subject to employee rules and practices as outlined in other parts of this handbook.