

# Determining Whether Staff Are Employees or Contractors

**Q:** How do we determine whether staff are to be treated as employees or self-employed?

**A:** The IRS provides several tests for determining whether someone should be classified as an employee or contractor. In fact, there are at least four sets of standards that have been used to legally determine whether an individual should be classified as an employee or an independent contractor. These tests should be reviewed when deciding how to classify your minister and non-minister staff.

Regardless of which of these tests is used, it is safe to say that the vast majority of ministers serving in

local churches ought to be classified as employees of the church. There are exceptions to this and these will be discussed later in this article.

Let's review one of these employment tests, called the "7-Factor Test." It should be noted that this is not simply used as a "yes" or "no" tabulation with the majority response determining the correct employment status of the individual. Rather, all of the factors are weighed and each may carry more or less importance based upon the circumstances of the work being performed.

Factor	Explanation
1. How much control does the employer have over the details of the work of the potential employee?	The greater control that the church has with regard to the work and expectation with regard to how it is carried out (such as ministerial responsibilities of preaching, teaching, keeping of office hours, visitation, etc.), the more likely the worker is to be classified as an employee.
2. Which party pays for the tools and facility used in the work?	If the church supplies an office, computer, phones, etc., the worker is more likely to be classified as an employee.
3. Can the individual earn additional profit or incur loss in this work?	If the worker is provided a salary as compensation, he/she is more likely to be classified as an employee. Self-employed workers would be more likely to personally, financially benefit from the business prospering.
4. Does the employer have the right to discharge the worker?	If the congregation, church board or church management can remove or discharge a worker, that worker is more likely to be an employee.
5. Is the individual's work a part of the church's regular "business"?	If the worker performs work that furthers the church's regular or customary "business," they are more likely to be an employee.
6. How permanent is the work relationship?	A church worker hired for a temporary assignment is less likely to be considered an employee than one hired for an extended or undetermined amount of time.
7. Do both parties believe they are in an employer/employee relationship?	The church issuing a W-2 to a worker and the offering and receiving of fringe benefits are both indicators that parties believe they are entering into an employer/employee relationship.

As we stated, the vast majority of church-pastor relationships ought to be considered employer-employee relationships. Exceptions to this may occur when a pastor is not supervised by a board of the local church or perhaps is compensated by an organization other than the congregation to which he/she is assigned and serves.