

#2.6

INDEPENDENT CONTRACTORS

POLICY: It is the policy of Chapel by the Sea to take prudent steps to protect itself against general liability and worker's compensation claims, as well claims arising from the misclassification of employment status (i.e. employee versus independent contractor).

APPLICATION: This Policy covers all services provided to Chapel by the Sea.

PROVISIONS:

- A. Independent contractors hereunder shall:
 - 1. Be covered by:
 - a. Workers' compensation insurance, and
 - b. General liability insurance.
 - 2. Provide a Certificate of Liability to the Office Administrator.
 - 3. Comply with all government and local laws, rules, and guidelines
- B. The requirements in paragraph A1a for workers' compensation insurance may be waived when a business owner will complete the work called for in a contract without hiring staff.
- C. The requirements in paragraph A1b for general liability insurance may be waived when the risk is considered de Minimis (i.e. a minimal risk) by a corporate officer and legal council.
- D. If an individual providing services to Chapel by the Sea is not an independent contractor then that individual will be considered an employee. See Policy & Procedure #5.1 (Employee Classifications).
- E. The factors set forth in the Appendix on pages 2-3 may be helpful in determining whether an employer-employee relationship exists.

RESPONSIBILITY: The Office Administrator, working with the associated committee chairperson and the Finance and Stewardship Committee, shall be the person responsible for communicating with independent contractors.

APPENDIX

Generally, individuals who follow an independent trade, business, or profession in which they offer services to the public are not employees. However, Internal Revenue Service (“IRS”) regulations provide that an employer-employee relationship generally exists if the person contracting for services has the right to control not only the result of the services, but also the means by which that result is accomplished. In Rev. Rul. 87-41 the IRS developed the following list of 20 factors that may be examined in determining whether an employer-employee relationship exists.

1. ***Instructions:** If the person for whom the services are performed has the right to require compliance with instructions, this indicates employee status.
2. ***Training:** Worker training (e.g., by requiring attendance at training sessions) indicates that the person for whom services are performed wants the services performed in a particular manner (which indicates employee status).
3. ***Realization of profit or loss:** A worker who can realize a profit or suffer a loss as a result of the services (in addition to profit or loss ordinarily realized by employees) is generally an independent contractor.
4. **Integration:** Integration of the worker’s services into the business operations of the person for whom services are performed is an indication of employee status.
5. **Services rendered personally:** If the services are required to be performed personally, this is an indication that the person for whom services are performed is interested in the methods used to accomplish the work (which indicates employee status).
6. **Hiring, supervision, and paying assistants:** If the person, for whom services are performed hires, supervises or pays assistants, this generally indicates employee status. However, if the worker hires and supervises others under a contract pursuant to which the worker agrees to provide material and labor and is only responsible for the result, this indicates independent contractor status.
7. **Continuing relationship:** A continuing relationship between the worker and the person for whom the services are performed indicates employee status.
8. **Set hours of work:** The establishment of set hours for the worker indicates employee status.
9. **Full time required:** If the worker must devote substantially full time to the business of the person for whom services are performed, this indicates employee status. An independent contractor is free to work when and for whom he or she chooses.
10. **Doing work on employer’s premises:** If the work is performed on the premises of the person for whom the services are performed, this indicates employee status, especially if the work could be done elsewhere.
11. **Order or sequence test:** If a worker must perform services in the order or sequence set by the person for whom services are performed, that shows the worker is not free to follow his or her own pattern of work, and indicates employee status.
12. **Oral or written reports:** A requirement that the worker submit regular reports indicates employee status.
13. **Payment by the hour, week, or month:** Payment by the hour, week, or month generally points to employment status; payment by the job or a commission indicates independent contractor status.

14. **Payment of business and/or traveling expenses:** If the person for whom the services are performed pays expenses, this indicates employee status. An employer, to control expenses, generally retains the right to direct the worker.
15. **Furnishing tools and materials:** The provision of significant tools and materials to the worker indicates employee status.
16. **Significant investment:** Investment in facilities used by the worker indicates independent contractor status.
17. **Working for more than one firm at a time:** If a worker performs more than de Minimis services for multiple firms at the same time, that generally indicates independent contractor status.
18. **Making service available to the general public:** If a worker makes his or her services available to the public on a regular and consistent basis, which indicates independent contractor status.
19. **Right to discharge:** The right to discharge a worker is a factor indicating that the worker is an employee.
20. **Right to terminate:** If a worker has the right to terminate the relationship with the person for whom services are performed at any time he or she wishes without incurring liability that indicates employee status.

*These are often considered the three most important factors.

Source: <https://www.irs.gov/pub/irs-utl/x-26-07.pdf>