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Memo from Human Resources
re: Independent Contractors
(04/26/00)



THE ARCHDIOCESE OF SAN FRANCISCO
HUMAN RESOURCES

445 CHURCH STREET, SAN FRANCISCO, CA 94114-1799 (415) 565-3625 FAX (415) 565-3648

MEMORANDUM

TO: All Pastors
All Principals
Directors/Location Administrators

FROM: Carl Feil, Director of Human Resources *CF*

DATE: April 26, 2000

RE: **Independent Contractors**

Over the course of the past six months or so, the Office of Human Resources has received numerous calls for assistance in making determinations on whether a worker should be classified as an employee or as an independent contractor.

Because the penalties for the misclassification of workers are so high and the process so complicated, we decided to create a checklist to assist our parishes, schools, agencies and offices in making classification determinations.

We hope you will find the information and checklist to be a helpful tool for you to use. Please don't hesitate to call us at (415) ~~565-3625~~ if you are unsure of how to classify your worker or with any other Human Resource related question.

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Distribution:

- All Pastors
- All Principals
- Directors/Location Administrators:
 - Building Department
 - School of Pastoral Leadership
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 - Archbishop's Residence
 - Archbishop Quinn's Residence
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EMPLOYEE OR INDEPENDENT CONTRACTOR DO YOU KNOW ONE WHEN YOU SEE ONE?

Don't be fooled that just because the worker agrees to work on an 'as needed' or 'one time only' arrangement, the person is automatically an independent contractor.

Sound tempting?

Beware!!!

In California, courts and administrative agencies are scrutinizing the independent contractor relationship with increasing skepticism.

Why the Crackdown?

Many independent contractors do not pay the required personal income taxes and Social Security contributions, and thereby deprive the government of tax dollars. The IRS believes that misclassification of employees as independent contractors has resulted in literally billions of dollars of lost revenue due to underreporting of self-employment income.

"But I'll Never Get Caught"

Don't bet on it. Although it is true that in many situations, both parties feel that they benefit from the independent contractor relationship, the misclassification comes to the attention of state or federal authorities as a result of various situations. So how do most of these misclassification errors get discovered?

- Random employer audits by the IRS.
- The hiring firm terminates a

relationship with a worker it considers as an independent contractor, who then files for unemployment compensation.

- The worker sues for pension benefits.
- The worker is injured and seeks state disability or workers' compensation benefits.
- The government finds out that the independent contractor has not been paying personal income taxes and initiates an audit.
- The employer mistakenly files a W-2 instead of a Form 1099.
- Out of spite or retaliation, a worker reports the hiring firm to any one of the various state or federal administrative agencies, including the EDD, the Labor Commissioner, and Worker's Compensation Appeals Board, or the IRS.

What are the Penalties?

In addition to payment of federal income tax liability, there are many other penalties that can be applied. After all of the penalties are assessed, the amounts can be astronomical. In cases

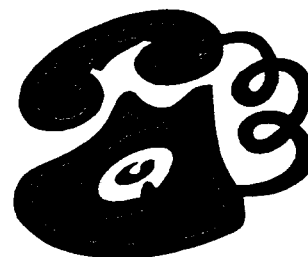
involving personal injury to the worker, the employer can be assessed a separate penalty of \$100,000 payable to the state for non-compliance with the Worker's Compensation Act. Other significant penalties which can be imposed include payment of any unpaid overtime for a period of three years plus a penalty of up to 30 times the employee's daily wage for failure to pay wages due in a timely manner.

H.R. to the Rescue!!!

The Office of Human Resources has developed a simple, one page checklist to guide you through the independent contractor maze.

Unless it's quite obvious that the person is an independent contractor, the safe bet is to hire the individual as an employee.

As always, if you are unsure or need a sounding board, call the Office of Human Resources at (415) 565-3625.



NAME _____

JOB _____

ARCHDIOCESE OF SAN FRANCISCO
INDEPENDENT CONTRACTOR CHECKLIST

DATE _____

Yes No

1) Is the work an integral and regular part of the business of the beneficiary of the services? _____

2) Is the work on-going in nature rather than brief, focused and unique? _____

3) Is the bulk of the work skilled and specialized? _____

4) Does the worker have an occupation or business distinct from that of the employer? _____

Is there evidence of a business license? (If yes, please attach copy) _____

Is there evidence of a business card? (If yes, please attach copy) _____

Is there evidence of a yellow page listing? (If yes, please attach copy) _____

Is there evidence of professional liability insurance? (If yes, please attach copy) _____

Is there evidence of multiple and current clients? (If yes, please attach names) _____

Is there evidence of multiple associates/employees working for this individual's business? (If yes, please attach names) _____

Is there evidence of an IRS Form 938P? (If yes, please attach copy from previous year) _____

5) Is the work significantly different from work being performed by other Archdiocesan employees? _____

6) What amount of time, if any, does the person spend working at the Archdiocese and what, if any, space or materials of the Archdiocese are used, and what, if any, significant profit/loss risks (eg. unreimbursed overhead) are involved?

7) Does the employer have the right to control the manner and means of accomplishing the desired results (even if that right might not be exercised)? _____

8) What percentage of the individual's current "business" is for the Archdiocese? _____ %

9) Is the person paid to complete a set job at a set fee without regard to the number of hours ultimately worked on the project? _____

10) Does the worker set his/her own hours using his/her own discretion? _____

Note - The above items reflect most of the common law factors considered by the I.R.S. etc. in determining whether or not a person is a bonafide independent contractor. Misclassification can result in assessments for back taxes and penalties. The I.R.S. does not weigh the answers equally and a "Yes" or "No" to a single item or two is not conclusive as to the outcome. However, "Yes" answers to items 1, 2 & 7 and "No" to items 3, 4, 5, 9 & 10 along with a high percentage in item 8 are strong indicators of employee status.