

GUIDELINES FOR DETERMINING IF A WORKER QUALIFIES AS AN INDEPENDENT CONTRACTOR

State and federal laws presume that individuals who work are employees of the entity for which they provide services, and the laws set strict requirements for classifying a worker as an independent contractor.

Archdiocesan policy on hiring independent contractors is simply to follow the law, which – as noted above -- starts from the presumption that workers are employees. The burden is on the employer to justify the classification as independent contractor. The controlling idea is that the person hired must indeed be "independent." An independent contractor relationship exists only when all three of the following elements are met (this is known as the "ABC test"):

- A. The individual is free from the location's control and direction, both under an agreement for performance of the work and in actually performing the work;
- B. The individual performs work that is outside the usual course of the location's regular activities; and
- C. The individual is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

If any one of the ABC test elements is missing, the individual must be classified as an employee.

Note that the authorities are very skeptical of the independent contractor designation and significant monetary penalties are imposed for misclassifying people who should be employees as “independent contractors.”

Because musicians, wedding coordinators or parish event planners are engaged in regular parish activities, they may be considered independent contractors only if, aside from performing services for the parish, they have active careers as musicians, wedding coordinators or event planners, routinely serve multiple clients, advertise, have operating licenses, carry their own insurance, have employees, etc. If these individuals are able to make a living doing exactly what they are doing for the location, even if the location no longer uses them, then and only then do they qualify as “independent contractors.”

Examples:

The Music Director is a member of the Los Angeles Master Chorale, gives music lessons or teaches voice, plays other musical gigs at various venues, and earns his/her income primarily as a music professional. This Music Director may be classified as an independent contractor even though he/she has a regular appointment singing the 10 a.m. Mass and holy day services. Give this person a W-9 and send a Form 1099 if the pay is more than \$600 a year.

If the Music Director is a middle manager at a bank during the week and sings only for one or two parishes on Sunday, that person is not likely to have an independent career as a singer. That person should be properly classified as an occasional employee whose pay is calculated by the hour. Give this person a W-4 to fill out, keep accurate time records, contribute to Social Security and provide a W-2 at the end of the year. If the location wishes to pay this occasional employee a flat rate per Mass or other liturgical activity, the “piece rate” rules on providing rest and meal breaks apply. A guidance



memorandum on how to pay a flat or piece rate is provided as a resource in the Administrative Handbook: <http://handbook.la-archdiocese.org/chapter-5/section-5-6/topic-5-6-1>

For additional information refer to the Administrative Handbook:
<http://handbook.la-archdiocese.org/chapter-5/section-5-6/topic-5-6-2>

California Department of Labor Standards Enforcement:
http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm

