Locally Funded Employee Hiring Manual

Seventh-day Adventist® Church

CAROLINA CONFERENCE

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- New hire/re-hire paperwork

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- Payroll questions
- Timesheets & RECAP sheets

Employee Portal: https://www.carolinasda.org/employee-portal.

Determine the Type of Employee

This section will help you determine if the individual you want to hire should be classified as an independent contractor or an employee, and if an employee, whether he/she should be classified as an hourly employee or a salaried employee.

Independent Contractor or Employee?

The following is a document produced by James H. Kizziar Jr., Partner at Bracewell & Giuliani LLP in July 2009. There are four different tests that can be used to determine if an individual is an independent contractor or an employee. Facilities must carefully analyze whether workers are properly classified as independent contractors or employees under any of the below tests. If there is any uncertainty about the proper classification, consult with legal counsel before making a final decision.

I. THE RESTATEMENT (SECOND) OF AGENCY "TEN-POINT" TEST

At common law, a "servant" or employee is "a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control." Restatement (Second) of Agency, ~ 200. The following ten factors are to be considered in determining whether a worker is an independent contractor or employee:

1. The extent of control which, by the agreement, the master may exercise over the details of the work;
2. Whether or not the employed is engaged in a distinct occupation or business;
3. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
4. The skill required in the particular occupation;
5. Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
6. The length of time for which the person is employed;
7. The method of payment, whether by the time or by the job;
8. Whether or not the work is part of the regular business of the employer;
9. Whether or not the parties believe they are creating the relation of master and servant;
10. Whether the principal is or is not in business.

Courts generally agree that although no one factor is determinative, the most important factor is the right of control. It is the right to control, not the actual exercise of that right, that is analyzed by courts. Similarly, the existence of an agreement providing that the worker is an independent contractor is not determinative and often is given little weight.

II. THE SUPREME COURTS'S DARDEN TEST

In 1992, the U.S. Supreme Court issued a decision in Nationwide Mut. Ins. Co. v. Darden,[1] in which it outlined a 12-factor test (similar to the 10-factor Restatement test) to determine employee or independent contractor status. In determining whether a hired party is an employee under the general common law of agency, the Supreme Court held that it considers "the hiring party's right to control the manner and means by which the product is accomplished." The court listed the following 12 factors that are relevant to this inquiry:

1. The skill required;
2. The source of the instrumentalities and tools;
3. The location of the work;
4. The duration of the relationship between the parties;
5. Whether the hiring party has the right to assign additional projects to the hired party;
6. The extent of the hired party's discretion over when and how long to work;
7. The method of payment;
8. The hired party's role in hiring and paying assistants;
9. Whether the work is part of the regular business of the hiring party;
10. Whether the hiring party is in business;
11. The provision of employee benefits;
12. The tax treatment of the hired party.

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1 503 U.S. 318 (1992).

III. THE IRS TEST

For purposes of tax withholding and payment of Social Security, Medicare, and federal unemployment insurance taxes, the IRS formerly used a 20-factor test. However, "[u]nder pressure from Congress and from representatives of labor and business," it consolidated the twenty factors into an eleven-point test, which is divided into three principal categories, as follows:[2]

A. Behavioral control

This includes facts showing whether the business has a right to direct and control how the worker does the task for which he was hired, and include the type and degree of:

1. <u>Instructions the business gives the worker</u>, such as:
    a. When and where to do the work;
    b. What tools or equipment to use;
    c. What workers to hire or to assist with the work;
    d. Where to purchase supplies and services;
    e. What work must be performed by a specified individual;
    f. 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.

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2 IRS Publication 15-A (2009) and Texas Workforce Commission website at <http://www.twc.state.tx.us/news/efte/appx_d_irs_ic_test.html.>

2. <u>Training the business gives the worker</u>. An employee may be trained to perform

services in a particular manner. Independent contractors ordinarily use their own methods.

B. Financial control

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

1. 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 they perform for their business.
2. The extent of the worker's investment. An employee usually has no investment in the work other than his or her own time. An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not necessary for independent contractor status.
3. The extent to which the worker makes 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.
4. 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 usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
5. The extent to which the worker can realize a profit or loss. Since an employer usually provides employees a workplace, tools, materials, equipment, and supplies needed for the work, and generally pays the cost of doing business, employees do not have an opportunity to make a profit or loss. An independent contractor can make a profit or loss.

C. Type of relationship

Facts that show the parties' type of relationship include:

1. Written contracts describing the relationship the parties intended to create.
2. Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
3. The permanency of the relationship. If the employer engages 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 the intent was to create an employer-employee relationship.
4. 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 the employer's regular business activity, it is more likely that the employer will have the right to direct and control the engaged worker's 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.

IV. THE FAIR LABOR STANDARDS ACT TEST

The definition of "employee," "employer," and "employ" in the FLSA are comprehensive in scope and are to be interpreted broadly. To determine whether an individual is an employee under the FLSA, courts focus on the "economic realities of the relationship." Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947); see also Carrell v. Sunland Constr., 998 F.2d 330, 332 (5th Cir. 1993); Reich v. Circle C. Investments, 998 F.2d 324, 327 (5th Cir.1993).

More recently, in Shultz v. Capital Int'l Securities, 466 F.3d 298, 304-305 (4th Cir. 2006), the court set out the six factors:

1. the degree of control that the putative employer has over the manner in which the work is performed;
2. the worker's opportunities for profit or loss dependent on his managerial skill;
3. the worker's investment in equipment or material, or his employment of other workers;
4. the degree of skill required for the work;
5. the permanence of the working relationship; and
6. the degree to which the services rendered are an integral part of the putative employer's business.

Hourly or Salary?

An exempt employee is one who is exempt from overtime regulations and is a salaried employee. A non-exempt employee is *not* exempt from overtime regulations, and is an hourly employee. Generally, two requirements must be met to classify an employee as exempt: 1) They must earn a salary, and 2) They must hold a position with duties that the U.S. Department of Labor designates as appropriate for exempt positions. These positions fall into six categories: executive, administrative, learned professional, creative professional, computer professional, and outside sales.

The following tests will help you determine if the employee you wish to hire will be hourly (non-exempt) or salaried (exempt).

Executive Employee

1. Is the employee's primary duty managing the enterprise or department or subdivision of the enterprise?
2. Does the employee customarily direct the work of two or more other employees or their equivalent?
3. Does the employee have the authority to hire or fire, and do the recommendations carry significant weight if unauthorized to make the final decision?
4. Is the employee paid the equivalent of at least $455 per week?

If you answered "No" to any of these questions, the worker is not an exempt employee.

Administrative Employee

1. Is the employee's primary duty performing office or non-manual work directly related

to the management or general business operations of the employer or the employer's customers?
2. Does the employee exercise discretion and independent judgment with respect to matters of significance? That is, does he/she evaluate and compare possible courses of action and then make a decision or recommendation after considering various possibilities?
3. Is the employee paid the equivalent of at least $455 per week?

If you answered "No" to any of these questions, the worker is not an exempt employee.

Learned Professional Employee

1. Is the employee's primary duty to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?
2. Is the advanced knowledge obtained by completing an academic course of study resulting in a four-year college degree or leading to certification?
3. Is the employee paid the equivalent of at least $455 per week?

If you answered "No" to any of these questions, the worker is not an exempt employee.
Exception: *Those who have completed the educational requirements for a law or medical degree need not meet the minimum salary requirement. Also, teachers need not be certified or meet the minimum salary requirement to qualify as learned professionals.*

Creative Professional Employee

1. Is the employee's primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?
2. Does the work require more than intelligence, diligence, and accuracy, i.e., does it require "talent"?
3. Is the employee paid the equivalent of at least $455 per week?

If you answered "No" to any of these questions, the worker is not an exempt employee.

Computer Professional

1. Is the employee paid at least $455 per week on a salary or fee basis or, if paid hourly, at a rate of not less than $27.6 per hour?
2. Is the employee's primary duty:
    - Application of system analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specification; or
    - Design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specification; or
    - Design, testing, documentation, creation or modification of computer programs related to machine operating system; or
    - A combination of the aforementioned duties requiring the same level of skills?

If you answered “No” to question #1 or were unable to answer “Yes” to any parts under question #2, the worker is not an exempt employee.

Outside Sales Employee

1. Is the employee’s primary duty to perform work requiring invention, originality or talent in a recognized field of artistic endeavor such as music, writing, acting and the graphic arts?
2. Does the work require more than intelligence, diligence, and accuracy, i.e., does it require “talent”?
3. Is the employee paid the equivalent of at least $455 per week?

If you answered “No” to any of these questions, the worker is not an exempt employee.

Adventist Screening Verification (formerly Verified Volunteers)

Successful completion of the Adventist Screening Verification training and background check through Sterling Volunteers, formerly Verified Volunteers, is a requirement and condition of employment with the Carolina Conference. The safety of children in Conference churches and schools is of the utmost importance. Employees and volunteers need to know how to recognize abuse and the rules for reporting it.

The online training and background check must be completed **by the first day of employment**. Once an employee has completed the training and background check, contact JoAlyce Waugh to find out if the Sterling Volunteers database shows that the individual has done so and is eligible. If JoAlyce is not available, one of the other HR employees will be able to assist you.

Instructions for logging in to Sterling Volunteers and completing the course and background check are in the Employee/Volunteer Screening section of the Employee Portal on the Conference website.

New Hire/Re-hire Paperwork

Following is a list of forms that must be completed by the applicant and faxed to HR ***on or before the first day of work****. This cannot be stressed enough — the Conference is required to file E-Verify to obtain employment authorization from U.S. Citizenship and Immigration Services (USCIS) no later than the third day of work. Also,* ***the hire date on the I-9 MUST match the first date that hours are recorded on the employee's time sheet.***

IMPORTANT: Do not send social security numbers through email unless contained in a password-protected file. If you send social security numbers in a password-protected file, call the person you sent the email to and tell them the password over the phone. If the emails are compromised in any way, we don't want these items associated with each other.

A designated representative of the local entity — pastor, treasurer, head elder, head teacher/principal, etc. — is responsible for ensuring that all applicable forms are completed, signed, and submitted to HR in a timely manner. He/she completes the Designation of Authorized Representative form.

The new hire/re-hire forms and links to third-party forms are available in the New Hire Forms section of the Employee Portal on the Conference website.

I-9

This form must be completed **on or before the first day of employment.** The employee fills out the first page, and the designated representative fills out the second page. The designated representative must personally examine the employee's supporting documents to verify that the documents appear genuine.

A list of acceptable documents is on the third page of the I-9. **Only original, unexpired documents are acceptable.** Faxes, photocopies, laminated or expired documents are unacceptable. The employee can present either:

1. Any one document from List A **or**
2. Two documents, one from List B (identity) **and** one from List C (work eligibility).

NOTE: It is illegal to request that an employee provide only specific documents from the list.

- Enter the first day of work on the second page of the I-9. Time sheets must reflect the same first day of work.
- The employer is the Conference, not the local school, church, camp, or other facility. Enter the Conference name and address in the certification section: Carolina Conference of SDA, 2701 E. WT Harris Blvd., Charlotte, NC 28213.
- The designated representative should sign and date the form in the section just under the employee's first day of employment, NOT at the very bottom of the page.
- Fax the completed I-9, a copy of supporting document(s), and the designated representative form to HR **on or before the first day of employment.** E-Verify must be filed by the third day of employment to comply with USCIS rules.
- Mail the original I-9, the copy of supporting document(s), and the designated representative form to HR **on or before the first day of employment.** These are the only original documents that must be mailed to HR as well as faxed. The Conference is required to have the original I-9

and a “first generation” copy of the supporting documents on file.

- **If you do not know how to complete an I-9 form, please do NOT guess. Call HR for assistance.**

Application

Please ensure that the employee has filled in all the requested information.

Job Description

You are welcome to modify the sample job descriptions on the Employee Portal page on the Conference website to meet your specific needs. Please do not change or delete any of payroll-related fields at the top of the form. All payroll fields must be filled in or we won’

W-4

Please ensure that the employee has filled in all the requested information. When hiring an LFE pastor, contact HR before he/she fills out the W-4. The Internal Revenue Service (IRS) considers pastors dual-status employees, and this affects how pastors pay taxes.

NC-4/NC-4EZ

Complete ONLY if the work location is in North Carolina. Please ensure that the employee has filled in all the requested information. When hiring an LFE pastor, contact HR before he/she fills out the NC-4 or NC-4EZ. The IRS considers pastors to be dual-status employees, and this affects how pastors pay taxes.

Direct Deposit Form

Please ensure that the employee has filled in all the requested information and has provided a voided check or a bank-issued direct deposit form. Numbers in the wrong order or that are illegible may result in a paycheck being deposited into the wrong account.

EEO-1

The Conference is required to file a report annually with the Equal Employment Opportunity Commission (EEOC) that specifies employee diversity at each location.

Conflict of Interest

On the Conflict of Interest Statement of Acceptance/Disclosure form, employees must disclose any conflicts of interest, i.e., a relative serving on a committee that could influence decisions about wages or a relative who sells goods to the Conference. Even if there are no disclosures, the employee still needs to sign and date the form.

Retirement

The employee needs to read through the Retirement Participation Notice, and sign and date at the bottom. Give the employee a copy of this form for their reference.

Employees who are new to denominational employment or who have not previously participated in the denominational retirement plan will automatically be enrolled at 3 percent. They can specify if they want pre-tax, after tax, Roth, or a combination thereof. Employees who have participated previously will be enrolled at the percentage currently on file at the NAD Retirement Office. Employees who wish to change their contribution percentage or the contribution type (options are pre-tax, after-tax, and Roth) will need to register their Empower account online AFTER their first paycheck, log in, and make the change(s).

Specifics about eligibility and employer contributions follow:

Eligible to Participate:

- Twenty years old or older
- Not considered temporary (employed for 5 months or less)
- Not a student
- Not a substitute teacher

Employer Contributions:

- Full-time employees receive a match of up to 3 percent and a basic contribution of 5 percent, both of which are paid by the local entity.
- Part-time employees receive a match of up to 3 percent, which is paid by the local entity. They are not eligible for the basic contribution.
- Temporary employees are not eligible for either the match or the basic contribution.

Health Care Assistance Plan (HCAP)

Contact JoAlyce Waugh for the open enrollment form and the options page. These forms are NOT available on the Employee Portal page on the Conference website.

Employees who work 30 or more hours per week are eligible to participate in the North American Division's health care assistance plan (HCAP). Dependent children are eligible to receive coverage without stipulations.

The employee's spouse can receive primary coverage under the plan IF:

- He/she is unemployed,
- He/she is self-employed and has no insurance coverage available,
- He/she has no insurance coverage available through his/her work.

The employee's spouse can receive secondary coverage under the plan IF:

- He/she has insurance available through his/her work AND has purchased and maintains that insurance coverage.

If the employee or any covered dependents are also covered under another insurance plan, coordination of benefits information is required so that our health care plan administrator and the other insurance plan administrator are both aware that there is dual coverage. Contact JoAlyce Waugh for the specific information needed.

The employer's portion of the HCAP contribution is paid to the Conference by the local entity. This is calculated by subtracting the employee's contribution (on options page) from the base cost.

2020 Healthcare Benefits Base Cost	Accelerate Plan
Employee Only	$780
Employee + 1 Child	$938
Employee + 2 or more Children	$1,035
Employee + Spouse	$1,299
Employee + Spouse + 1 Child	$1,360
Employee + Spouse + 2 or more Children	$1,496

2020 Healthcare Benefits Base Cost	Access Plan
Employee Only	$951
Employee + 1 Child	$1,108
Employee + 2 or more Children	$1,205
Employee + Spouse	$1,469
Employee + Spouse + 1 Child	$1,530
Employee + Spouse + 2 or more Children	$1,666

If the employee elects not to participate in the plan, he/she must complete the Employee Information section on the first page of the HCAP enrollment application, check the box on the second page to decline coverage, and sign and date the last page.

If a spouse or dependent child needs to be added to or removed from the employee's coverage, contact JoAlyce Waugh for the appropriate form.

Basic Life and Long-term Disability

Employees who work 30 or more hours per week qualify for employer-provided basic life and long-term disability (LTD). The local school or church is responsible for paying the employer premiums:

- Basic life is $14.15 per month per eligible employee.
- LTD is based on the employee's annual income and the approximate range is between $7.00 and $15.00 per month.

NC Youth Employment Certificate

On or before the first day of work, an employee younger than 18 years old is required to present a youth employment certificate signed by his/her parent or guardian. It is the designated representative's responsibility to verify the minor's age, proposed job duties, and any restrictions noted on the certificate.

Monthly Payroll

Pay Period

The pay period runs from the 16th of one month to the 15th of the next month.

Payroll Documents Due

Timesheets and RECAP sheets are due by the 20th of each month. These forms are on the Employee Portal page on the Conference website. The completed documents can be faxed to HR or emailed to Teresa Taylor.

ACH Debit Dates

All LFE payments will be processed as an automatic draft to each entity's checking account on approximately the 25th of each month. You will be notified if there is any difference from the amount submitted on your RECAP sheet(s).

If an ACH debit has not been done for your entity before, complete and return the LFE ACH Form to Teresa Taylor. This form is on the Employee Portal page on the Conference website. A new form must be submitted if any of the ACH authorizations change (monthly remittance, accounts receivable, CEF payment, local funded).

Pay Dates

All employees are paid monthly on the 27th of each month. If the 27th falls on a Sabbath, the payment will be dated Friday the 26th. If the 27th falls on a Sunday, the payment will be dated Monday the 28th.

Vacation & Short-term Sick Accruals

All full-time and part-time employees accrue vacation and short-term sick time at the rates shown below:

	Vacation Time Accrued Per Year of Full-time Service	Vacation Time Accrued Per Hour
During first 4-year period	2 weeks	0.038355
During next 5-year period	3 weeks	0.057534
After 9 years of service	4 weeks	0.076713

Vacation time may be earned and accumulated from year to year up to a maximum of one hundred fifty (150) percent of the annual vacation entitlement. Once the maximum allowable accrual has been reached, vacation time will stop accruing.

Short-term sick time accrues at the rate of 0.02313/hour on regular hours, vacation hours, sick leave hours, and holiday hours. Sick time does not accrue on overtime hours. The limit for sick time accrual is 76 hours.

Termination of Employment

When an LFE is no longer working, please notify HR as soon as possible so employment can be terminated in the payroll system. **At time of termination, all remaining vacation and short-term sick accruals will be paid out to full-time and part-time employees.** This payout is the local entity's responsibility and should be budgeted for throughout the employee's tenure.