

## Who Are Employees?

Under IRS [Publication 15-A](#) common-law rules anyone who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. The legal test is whether there is a right to direct and control.

**Flight Departments exercise the right to direct and control** when contingent flight crewmembers are instructed:

**When and where to do the work** - Departure airport, day, and time, report time, sequence of flight itinerary, duration of the trip, etc.

**What equipment to use** - The A/C on which to provide flight services

**Where to purchase supplies and services** - Which caterer to order from, what fuel supplier, what FBO, which weather service, which handler, which hotel to stay at.

**What work must be performed by a specified individual**

**What order or sequence to follow** - Contingent pilots and flight attendants follow the Company's trip itinerary. They follow the company's SOP and safety policy while performing pre-flight, in-flight and post-flight duties.

The services contingent flight crewmembers perform are a **key aspect** of the regular business of the flight department, and they follow the same path and footsteps of regular company employees.

**IRS [Publication 15-A](#) states for Misclassification of Employees:**

**Consequences of treating an employee as an independent contractor.** If you classify an employee as an independent contractor and have **no reasonable basis** for doing so, you may be held liable for employment taxes for that worker.

**Relief Provisions.** If you have a reasonable basis for not treating a worker as an employee you may be relieved from having to pay employment taxes for that worker. You (or your predecessor) must not have treated any worker holding a substantial similar position as an employee for any periods beginning after 1977.

**IRS [Publication 15](#) and [15-A](#) defines an employee under common law:**

**Employee status under common law.** Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is you have the right to control the details of how the services are performed.

**If an employer-employee relationship exist, it does not matter what it is called or how it is labeled.** The employee may be called an agent or independent contractor. The substance of the relationship, not the label, governs the worker's status. **It does not matter how payments are measured or paid, what they are called. Nor does it matter whether the individual works full-time or part-time.**