

IDAHO REAL ESTATE COMMISSION

Guideline #3

Revised July 1, 2014

### REGULAR EMPLOYEE STATUS DETERMINATION

The License Law recognizes an exception to the licensure requirement when the acquisition, exchange, or disposition of real property is by the property owner “or a **regular employee** of the owner” acting within the scope of his or her employment.” Idaho Code § 54-2003(1)(b).

In 2014, the legislature adopted a bright-line test for distinguishing a “regular employee” from an independent contractor. For purposes of the licensure exemption:

“Regular employee” means an individual who performs a service for wages or other compensation and whose employer withholds **federal employment taxes** under a **contract of hire**, written or oral, express or implied.

Idaho Code § 54-2004(39) (emphasis added).

The “federal employment taxes” an employer is required to withhold generally consist of federal income taxes, social security taxes and Medicare taxes. See IRS Pub. 15 (Circular E), Employer’s Tax Guide, <http://www.irs.gov/pub/irs-pdf/p15.pdf>.

A “contract of hire” means an agreement by which the individual provides labor or services to the owner/employer for wages or remuneration or other thing of value supplied by the owner/employer. The agreement need not be in writing. As stated in the statute, the contract of hire may be written or oral, express or implied. See also *Daleiden v. Jefferson County Joint School Dist.* No. 251, 80 P.3d 1067, 139 Idaho 466 (Idaho 2003).

*This guideline is not a new law but is an agency interpretation of existing law.*

For more information on this guideline, please contact:

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