

IDAHO REAL ESTATE COMMISSION  
Guideline #3  
Revised July 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(42) (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/publications/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.*  
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