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Newsletter, April 2013 Employee or Contractor?

Most professional practices (medical, dental, veterinarian, accounting etc.) want to classify their hired professionals as contractors not employees. Contractors are cheaper and easier than employees. You don't withhold taxes for contractors, nor do you pay benefits, workers compensation or unemployment insurance, nor must you comply with the wage & hour laws (including overtime) for contractors.

Who is an employee and who is a contractor? To determine who is an employee, the IRS considers 3 factors:

1. Whether the employer has behavioral control over the worker, that is, whether the employer controls how the worker does the job.
2. Whether the employer has financial control over the worker, that is, whether the worker is invested in his own business, has other clients, and is not dependent on the employer.
3. The relationship between the parties, which takes into account that contractors usually work on projects and do not work open-ended jobs. This also takes into account that contractors usually do not provide the core services that the business offers to its customers, e.g. in a medical practice, workers who provide health care services usually are employees not contractors.

In most professional groups, using the above 3 factors, hired doctors look more like employees than contractors. The exceptions are obvious, for example, professionals who do locum tenens (temp staffing), or professionals who have their own corporations and who bring their own ancillary personnel to the job.

If your group believes it can safely classify a doctor as a contractor, then be sure to comply with the safe harbor at IRS Section 530. Specifically, don't convert an existing doctor-employee to contractor status without a significant change in job duties; where you have workers doing the same job, don't classify some as employees and others as contractors; and be sure to file all tax returns on a basis consistent with the classification as contractor.

My advice. I advise clients to classify hired professionals as employees, with the sole exception when a professional is obviously a contractor. The risks of misclassification outweigh the benefits. If you get caught, you must pay all of the back payroll taxes, workers compensation, overtime and more that you tried to avoid, plus penalties and interest.

The penalties hurt the most. The IRS assesses a penalty based on its opinion of you. If the IRS believes your story, the penalty can be as “low” as 20% of the FICA that should have been withheld and 1.5% of wages. If the IRS thinks you deliberately misclassified, it can hold you responsible for all employment taxes that should have been paid, including income tax and the employee’s share of FICA and FUTA. Worse, the IRS can seek recourse from the practice owners and officers individually for the entire liability – there is no corporate shield.

In brief, the bill for misclassification gets very expensive very fast, and it’s not worth the risk.

But will I get caught? I don’t know if the IRS will find out. I only know that the IRS makes good money from misclassifications, hence it has incentive plus expensive computer systems to catch you. Worse, I know that your own employees and contractors will be the first informants in line when an employment dispute arises.

Lastly, if you want to reclassify a contractor and call her an employee, try to do it as of January 1. With a January 1 effective date, the physician should not receive a 1099 and a W-2 in the same year for the same job, which could trigger an audit.

I hope this article helps you. Call me if you want to talk more.

Thoughts on Eating

One of the very nicest things about life is the way we must regularly stop whatever it is we are doing and devote our attention to eating.

– *Luciano Pavarotti*

My doctor told me to stop having intimate dinners for four unless there are three other people.

– *Orson Welles*

The discovery of a new dish does more for humanity than the discovery of a new star.

– *Jean Anthelm Brillat-Savarin*

Some folks derogate the gourmet experience because it’s so passing, ephemeral. In response, Julian Baggini says, “of course it’s ephemeral: all experiences are; life itself is. The difference is that unlike, say, opera, when you are eating food you can never forget that fact.”



“I’m cold, I’m hungry, and I want love!”