

Independent Contractor vs. Employee: An Easy Test to Tell the Difference

By Kevin P. McNamee, DC, LAc

A difficult concept for students to grasp is telling the difference between an independent contractor and an employee. What separates one from the other? If you hire a person as an employee but treat him as an independent contractor, you face penalties and interest on back payroll taxes from the IRS. Avoiding this situation is the primary motivation for employers to convince the employee that he is an independent contractor.

An independent contractor is a person who conducts his/her own business independent of employer control. The independent contractor has control over fees; hours; types of services, etc. Conversely, the employee is an extension of the employer; he/she does not have control over the business fees, types of services offered, hours of operation, etc.

The IRS utilizes a 20-point test to help differentiate between the two, but I will summarize it according to the areas specific to your practice. I believe this will be more practical when you decide to enter a practice or hire an employee.

Function	Are You an - Employee?	Independent Contractor?
Insurance Claim Forms Practice name Tax ID License #	The employer's practice name, tax ID and license number are on the insurance claim form.	Your practice name, tax ID and license number are on the insurance claim form.
Payments for Services Patient and insurance company	Payments are made in the name of the employer or employer's practice name.	Payments are in your name or your practice name.
Hours of Operation	The employer establishes your hours.	You establish your hours.
Depositing Payments Patient and insurance company payment	Deposits are made to the employer's bank account.	Deposits are made to your bank account.
Payroll Taxes	The employer deducts taxes from the employee paycheck; the employer also makes employee tax contributions and issues a	You pay all taxes. You receive a 1099 form from all insurance companies you billed during the year.

W-2.

Patient Charts

Charts belong to the **employer** and stay with the office when you leave.

Charts belong to **you** and go with you when leaving.

At Risk for Loss

Employer - you still get paid regardless of the money collected.

You are at risk of not being paid if the money isn't collected.

Note that the employer and you cannot mix and match the best from each column to suit your desired practice location. You are either in one column, with all its characteristics, or the other. You cannot be both an employee and an independent contractor simultaneously.

Practice Building Suggestion

During the early stages of a practice, the new practitioner has to maintain an outside job to support the expenses of a developing business. One option is that the new practitioner work a few days a week as an employee treating the office patients - say Monday, Wednesday and Friday. On Tuesday, Thursday and Saturday, he treats his own patients as the independent contractor. This arrangement is more convenient to the new practitioner, and eliminates travel time to and from the office (if the place of employment is outside the office). As the new doctor's practice grows, the hours worked as an employee at another practitioner's office are reduced or eliminated completely. The trick is finding office space to rent, which also has employment possibilities within.

There are other factors included in the IRS's 20-point test that need to be considered; however, the ones I have discussed are the most common differentiating factors. If you are not clear as to which category you should be in, check with your accountant or business attorney. Do not rely on your employer's assurances since many employers don't know all the details. Professional clarification may be in order.

If you wish to learn more about operating your business, please visit the website listed below.

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