

Employees vs. Independent Contractors – What Dentists Should Know

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Congratulations! Your practice is growing and you would like to bring on another dentist to work for you. Once you have found the perfect candidate and you are ready to bring them on, it is time to decide whether this new dentist should be classified as an independent contractor or employee of your practice.

It is important to properly classify dentists working in your practice because the misclassification of an employee as an independent contractor can result in serious financial ramifications including taxes, fines and penalties from both the federal government and New York.

Here is what you need to know:

What is an Independent Contractor?

A general rule of thumb is that a dentist is an independent contractor if the dentist has control over the number of patients seen and the dentist's work schedule and can freely provide professional services to other third parties. A dentist is not an independent contractor if the practice exerts more than minimal control over the dentist's work schedule, billing and payment, or other key activities.

Practices often classify dentists as independent contractors because independent contractors and those engaging in their services, if properly classified, do not have to comply with state and federal withholding requirements and payroll taxes. Instead, the practice engaging an independent contractor simply issues a 1099 at the end of each year and the contractor is responsible for reporting the income, which is subject to self-employment tax.

What is an Employee?

If the practice has control over the dentist's patient load and schedule, the dentist is an employee of the practice. An employee is supervised by the practice. Employees may be entitled to certain benefits and protections under state and federal laws and the practice, as the employer, is responsible for withholding a portion of an employee's earnings for tax purposes.

What Factors are used to Determine Proper Classification?

Classification is a question of control. Independent contractors have complete autonomy over their work lives, whereas employees must answer to their employer and abide by their employer's policies. Whether the dentist is an independent contractor or employee will be determined on a case-by-case basis. The federal government (through the Fair Labor Standards Act and the Internal Revenue Service (IRS)) and New York's Department of Labor will analyze the employee/contractor classification independently, but there are some factors that both the federal government and New York will consider when determining if a dentist is an employee or an independent contractor, such as:

1. The level of supervision exerted by the practice
2. Whether the patients belong to the practice or the dentist
3. Who makes the dentist's schedule
4. Who pays for laboratory fees, marketing expenses, and other fees/expenses
5. Who provides the dentist with tools, supplies and equipment

ON THE LEGAL SIDE

6. Who pays for the dentist's health and malpractice insurance, licensing fees, continuing education
7. Is the dentist entitled to benefits such as paid time off and 401K participation

Additionally, the government may consider whether the work being performed by the dentist is integral part of the practice's business (e.g., a general dentist providing professional services at a general dentistry practice).

What are the Consequences of Misclassifying?

Over the past 5 years, a substantial increase in independent contractor audits by state departments of labor and the IRS has been observed. If an agency audits a practice and finds that the practice has misclassified a dentist as an independent contractor, the agency will likely seek payment of unpaid employment, disability, and social security taxes, including interest and penalties. This could potentially cost the practice millions of dollars in taxes and fees.

In addition, the misclassified dentist may be retroactively entitled to insurance coverage and other benefits which should have been offered by the practice if the dentist had been properly classified as an employee. If the dentist is deemed to be a nonexempt employee and worked more than 40 hours in any given week, the practice will also be responsible for back payment of overtime.

Finally, classification as an independent contractor, even if respected, may make it more difficult to enforce restrictive covenants (e.g., a non-compete or a non-solicit) during and after the engagement ends than it would be against an employee.

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November 5, 2025 | 6:30 - 8:30 pm
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