

# Employee vs Independent Contractor: What's the Difference?

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When a clinician joins a practice, either full-time or part-time, the question often arises about whether they should be characterized as an “Employee” or as an “Independent Contractor (IC).”

In short, an employee is a worker who performs duties under the control and direction of an employer whereas an IC is a self-employed worker who provides services to a client under a contractual agreement. But there's more to the picture.

## **One Key Difference Is Who Pays Payroll Taxes**

When the clinician is an employee, the employer pays the matching Medicare and FICA tax (about 8%). At the end of the year, the employee gets a W2 form. If the clinician is an independent contractor, he or she pays the full Medicare and FICA tax, often quarterly. At the end of the year, the independent contractor gets a 1099 tax form from the employer.

## **Whether a Clinician Is Designated as an Employee or Independent Contractor Is Not Simply a Matter of Preference**

Rather, it is based on many factors specified by the Internal Revenue Service (IRS), including whether the employee has other sources of earned income (something which is easy for them to assess).

Another factor is the degree of structure imposed on the clinician. The greater the structure, the less likely it is that the clinician will be designated as an Independent Contractor. For example, if the clinician is required to see certain types of clients, attend specific meetings, and follow specific documentation policies and procedures, they are functioning more as an employee rather than as an independent contractor.

A full description of these roles is posted on the IRS website. In this document the IRS outlines three major categories they use to assess the status of the “worker.”

- **Behavioral control** – Who controls how the work is done. While the clinician may determine what actually happens in the session, the IRS might classify the clinician as an employee (rather than an IC) if the practice owner controls such things as when the work is done, how much is charged, what policies are followed and even perhaps the treatment approach if the practice has a particular philosophy or approach to practice.
- **Financial Control** – Does the clinician have unreimbursed business expenses or potential to realize a profit or loss from the business? Or, does the practice cover malpractice insurance and travel expenses? Even if the practice compensates the clinician on a percentage (or productivity) basis, the IRS could regard this as an employee relationship for tax purposes.
- **Type of relationship** – Does the clinician have the freedom to work for similar practices? Does the clinician receive employee benefits? Are the services provided a key aspect of the regular business of the practice? If a contract with a restrictive covenant offers some employee benefits to a clinician who provides psychotherapy in an outpatient behavioral health practice, this could be viewed by the IRS as an employer-employee relationship rather than independent contractor relationship.

## **It's Important to Accurately Classify Clinicians Who Are Paid by You**

The IRS can, and does, audit payroll records. Following such an audit, the IRS can require payment of all the back payroll taxes, and can assess fines and penalties.

Although it may initially seem simpler to label clinicians as “Independent Contractors”, we advise you to use extreme caution before using this designation. Do check with your accountant or tax attorney.

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