

# Status Questions

## Employee vs. Independent Contractor

- Are the working hours set?  
Is time off allowed?
- Is subcontracting of the services allowed? Specifically, can the independent contractor bring in other independent contractors to fill-in for them? Or must the services be personally performed by the independent contractor?
- When, where & how of instructions, methods or procedures:
  - Are the same services allowed at different prices?
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  - Are independent contractors paid even if the client service is not performed as when a client skips or no-shows for an appointment or fails to close a deal?
  - Are routines, procedures, or methodologies specified?
  - Is there a dress code or a uniform required?
- Are any tools, equipment, supplies or materials furnished?  
Are any expenses reimbursed? (travel, mileage, meals or entertainment, etc.)
- Integration of services:
  - Who holds the license?
  - Who holds the insurance?
  - Who collects the money? Who is the client's check actually made out to?
  - Who does the marketing, advertising, brochures, and business cards?
- Do clients belong to the business or the provider of the service?
  - May any representative provide the service?
  - May the client choose to consider their relationship is mostly associated with the independent contractor actually providing the service, for example: the client's *personal* hair stylist, or *personal* health care provider?
  - Are the independent contractor's services also available to the general public?
- Training: Is apprenticeship required?
  - Who pays for continuing education?
  - Who pays for licensing?
- Does the independent contractor have the freedom to realize a profit or loss?
- Is the same independent contractor in continuous service over a period of time or do the independent contractors come and go over time?
- Is the independent contractor full-time vs. part-time?
- Is there a specified office from which independent contractor must work or answer the business's telephone; are the premises specified or does the independent contractor have their own office from which they may perform the work?
- Can the independent contractor be fired and/or can they quit?
- Is the independent contractor responsible for agreed upon results?
- Is there evidence of quarterly estimated tax payments made by the independent contractor?

# Employee vs. Independent Contractor

## Key Distinctions

### KEY DISTINCTIONS OF AN EMPLOYEE:

- Employee is subject to your control on when and how things are done.
- Employee works in your office.
- Employee works only, or mostly, for you.
- Employee is often not a licensed professional.

### KEY DISTINCTIONS OF AN INDEPENDENT CONTRACTOR:

- Fully independent; responsible for own taxes, fees charged, times worked, etc.
- Has own place of business, business name, business cards, etc.
- Has a number of their own clients.
- Could have their own license for their profession.

## Tips for demonstrating that the worker is an Independent Contractor

### Have a signed written contract specifying that the worker:

- pays their own taxes (and taxes of any assistants),
- is free to take on other work,
- is free to take on assistants,
- provides their own professional license,
- provides their own insurance coverage,
- provides their own equipment and supplies,
- is compensated on straight commission, or for the work performed (not by the hour!!!) and they may submit invoices for payment,
- will receive a FORM 1099-MISC if amount earned exceeds \$600/year,
- is not subject to methods or procedures in accomplishing the work,
- is engaged to complete the work contracted for and can't be fired or quit.

### Things to AVOID:

- Avoid providing office space on a regular basis.
- Avoid providing training to the worker.
- Never pay a "bonus" to the worker.
- Never have a contractor do downtime or "fill" work.
- Never set working hours. (Start and completion dates are OK)