

## Independent Contractors v. Employees:

As an insurance agent, one of most frequent subjects discussed with club owners, involves the liability and workers compensation issues surrounding the use of independent contractors vs. employees. Many club owners want to try and reduce their exposure, both from employment related costs and their potential liability, by utilizing independent contractors rather than employees. This is most common with personal trainers, but also includes group exercise instructors and massage therapists. There are advantages and disadvantages no matter what method of payment the club owner decides to use to compensate their people.

One of the most common misconceptions that club owners have, is that if they “1099” their trainers and/or instructors rather than have them on the payroll, that they do not have to carry workers compensation coverage. Most of the time, the “independent contractor” status does not hold up in the eyes of the States that regulate workers compensation laws. The fact that club owners are booking or monitoring appointments, telling instructors when to work, and how to dress, constitutes an employee/employer relationship. Most club owners do not have written agreements with their independent contractors that clearly separate the club’s business from the contractors. The agreement should also contain a waiver or hold/harmless wording separating the liability issues between the club and the trainer or instructor.

Many of my clients will not engage in independent contractor relationships just because it can be bad for business. Since personal training is the most common problem area confronting club owners on how to compensate the trainers, I will address the pros and cons of the independent contractor issue.

### The Pros:

- 1) It is easier for the club to compensate the trainer. By paying a trainer a flat fee or predetermined split on services, the club is compensating the trainer only when revenue is being generated.
- 2) Saves on employment taxes and workers compensation costs. This is true only if there exists a clear agreement signed by the club and the trainer that recognizes the relationship as an independent and separate entity.
- 3) Reduces the club owner’s liability for the actions of trainer. The club owner’s insurance carrier may be able to subrogate against the negligent act or error created by the trainer, but it only works if the club maintains current certificates of liability insurance from the trainer that names the club as an “additional insured” on the trainer’s policy.
- 4) Easier to terminate an independent contractor than terminate an employee. Again, this is only true if there is a written contract that demonstrates this relationship.

### The Cons:

- 1) Lack of control. In a true independent contractor relationship, the club owner has very little “say” about how the trainer conducts their business. Strange

teaching techniques and attitudes are tougher to monitor if the trainer is not an employee.

- 2) The club owner is often still responsible for the trainer's workers compensation benefits. It depends upon individual State statutes and/or how your contractor agreement is written.
- 3) Loss of revenue. Many independent contractors up-sell their clients for personal training off premises and most will also sell their clients supplements and diet plans. The club owner usually receives no compensation for these areas of service.
- 4) You may be creating a competitor. Independent contractors, by nature, are more entrepreneurial than employees. A great trainer can turn into your toughest competitor. They know the club's strengths and weaknesses. They also often have access to the club's entire membership roster.

Personally, I have many clients that operate quite successfully utilizing both methods of compensation. I agree that in the areas of massage therapy, physical therapy, and day spa operations, it can be better to utilize independent contractor or even sub-contractor relationships. Again, it only works if a well written contract exists that is signed by both parties. Some of the key elements that should be part of the independent contractor agreement are; a) a clear understanding of the separate relationship, b) a requirement that the contractor maintain their own insurance, and c) a hold/harmless statement or waiver that indemnifies the club for the negligent acts of the contractor.

For a free copy of our recommended Independent Contractor Agreement, please call 800-985-2021 or email me, Ken Reinig, at [kreinig@frii.com](mailto:kreinig@frii.com).

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