

Should NPs, PAs and MDs be 1099 or Employees?

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In today's video, we'll discuss whether nurse practitioners and physician assistants can be 1099 contractors in a medical practice in California.

Hi, I'm Michael H. Cohen. I'm founding attorney of Cohen Healthcare Law Group. We help healthcare industry clients like you navigate the complex terrain of healthcare and FDA law so you can grow, launch, scale your healthcare business.

So generally, it's almost always legally safer in a highly regulated, highly litigious environment such as California or similar states for a practice, a medical practice to pay its clinical service providers as W2 employees. In general, depending on the state, penalties can be very high for misclassifying employees as independent contractors. Classifying nurse practitioners and physician assistants as employees can bring several risk mitigation benefits.

Secondly, mitigates the risk of a disgruntled worker leaving the practice and then finger pointing at the practice on, you know, the behest of a plaintiff's attorney saying that they were illegally misclassified as 1099 when they should have been a W2 and received salary and employment benefits. Now, of course, contractors can be more profitable and healthcare startups weigh the legal risk against the business advantages. So, some healthcare entities do assume the risk of misclassification. I mean, I wouldn't push it too far, but they do pay workers on a 1099 basis. But they should know that the control test is what normally applies.

So, the more control the healthcare business has over the worker, the more likely the worker is going to be classified as an employee, not a 1099.

Now, if the worker is providing minimal part time services to the practice, arguably there's less control. But even then, you can never totally eliminate the risk of misclassification. Now be aware that physicians, aka licensed medical doctors, cannot be employed by general corporation or LLC like an MSO, like a medical spa or IV hydration clinic. That's not a professional corp if there's a strong corporate practice of medicine doctrine. So, in those cases, the MSO contracts with the professional medical corporation in a medical service agreement. This is the well-known MSO model and it's designed to protect against unlicensed and corporate practice of medicine.

Thanks for watching. Please let us know if you have questions. We help industry clients just like you every day in similar ventures and we wish you all the success and we look forward to talking to you soon.

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