

## RISK MANAGEMENT ARTICLE

### Reducing risks in independent contracting

One of the benefits of working in dentistry is that dentists have the opportunity to work in many settings, including clinics, offices, and hospitals. This may mean working for an organization as an employee, or as an independent contractor (IC). Working as an IC can allow dentists to start building their own practice while limiting the financial overhead required to start a new dental practice. Engaging with an IC can also allow dental practices to enhance the range of services available at the practice location while saving on labor costs.

When considering working as, or with, an IC, it is important to be aware of the associated risks and benefits of an IC versus as an employee. Knowing the differences between an employee and an IC, some basic contract terminology, and tax considerations will help keep risks to a minimum.

### Employee vs. IC

In general, someone is considered an IC if the business they are providing services for has control over the *result* of the work, but not *what* will be done or *how* it will be done. ICs perform specified work for a business in exchange for payment but receive no benefits such as vacation or sick time. Whether a dentist works as an employee or an IC affects how their taxes are paid and the applicability of labor laws. Two key points for ICs are:

- The business does not withhold tax, Social Security, or Medicare taxes from payment.
- Employment and labor laws do not apply.

It can sometimes be unclear as to whether someone is an IC as opposed to an employee. There is no “checklist” that can be used to make a distinction between an employee and an independent contractor, since the determination must be made on a case-by-case basis. Depending on the particular facts and circumstances, there are factors that are commonly analyzed to determine the nature of the relationship between parties. The U.S. Department of Health & Human Services provides the following questions to help in making the distinction:

- Does the business control or have the right to control what the worker does and how the worker does the job? As noted earlier, when the business can control the result of work but not how the work is done, the worker usually is an IC.
- Does the business control the business aspects of the worker's job? These include how the worker is paid, whether expenses are reimbursed, and who provides tools and supplies. The business has greater control in the case of an employee.
- Is there a written contract or employee benefits such as a pension plan, health insurance, or vacation pay? Although both employees and ICs may have contracts, ICs do not receive benefits.
- Will the relationship continue and is the work a key aspect of the business? An IC contract specifies the length of time that work will be provided.

Any engagement between a worker and an employer should be formalized in writing, especially because of the tax implications. [Li v KC Dental Pty Ltd & Ors](#) provides an example of the legal issues that can arise when workplace arrangements are not formalized in writing.

### Contract components

A contract between an IC and the dental practice or organization they work with helps ensure there is a mutual understanding of factors such as services provided and payment. It also can protect the IC from negative effects, including unexpected termination and extended work hours.

The contract will usually be between the IC and the business or organization. The first part of the contract will state that the dentist is an IC so that it's clear there is no employee-employer relationship. This may be further emphasized by a statement that the IC will not receive any benefits and that the business will not withhold any taxes. Some of the elements typically included in contracts include the following:

**Duration.** The start and end date for the work should be stated. If the work continues beyond the planned end time, the IC should be asked to sign an addendum for the new time frame.

**Scope of work.** This is similar to the responsibilities in a job description. This section should provide sufficient detail so both parties are clear about expectations. The contract may specify measures the IC must meet to receive payment. For instance, the IC may need to treat a certain number of patients each week. An appendix may be used to provide more information.

**Equipment.** Depending on the work, the business may provide the IC with equipment or give them access to equipment on site. The IC may be responsible for paying for certain supplies, lab fees, or administrative costs. More information may be outlined in an appendix.

**Patient records.** Generally, employee-dentists do not own patient records, whereas an IC dentist may have their own patient pool and thus have ownership over their own patients' records, unless otherwise stipulated in the contract. If the dentist does not own the rights to patients' records as an IC, they should secure the right to photocopy the records of treated patients to defend themselves in case of a malpractice lawsuit, peer review, or dental licensing board action.

**Compensation.** Employees are paid at an hourly or annual rate, but ICs may be paid based on an amount of time worked, or when specific contracted work is completed. The IC will need to submit an invoice for payment. ICs should be sure the due date (30 or 60 days are the most common options) is stated in the contract and on the invoice. Normally the IC pays any expenses, but if the business will cover something, it is included here.

**Warranties and professional capacity.** This section states that the IC has the capacity and methods that "warrant" they will complete the work.

**Confidentiality.** This clause forbids ICs from discussing the work or the business's business details with another party; doing so will result in a breach of contract.

**Early termination.** This section notes that the contract can be terminated if either party fails to meet expectations. Those expectations should be clearly stated within the contract.

**Disputes.** The contract will name which state's regulations govern the agreement and outline the process to follow if a dispute occurs. This may include the use of arbitration or mediation.

To ensure that the professional relationship is properly classified for legal and tax purposes, it is helpful for each party to have an attorney review the contract before signing. After the contract is signed, both parties have to agree to any future changes.

## Tax time

As an IC, you can operate as a sole proprietor, a ICs can operate as a sole proprietor, a limited liability company (LLC), or an S-corporation. A sole proprietorship is an unincorporated business owned and run by one person (the IC) with no distinction between the business and the person. Many ICs choose to be sole proprietors, but a significant drawback is that the risk for liability extends to both the IC's work and to the individual, personally. Therefore, LLC or S-corporation may be better options. (Learn more about these options at <https://proxy.www.sba.gov/starting-business/chooseyour-business-structure>.)

No matter how they choose to operate, ICs should know that the IRS considers ICs to be self-employed. That means ICs will need to pay self-employment tax, which covers Social Security and Medicare. (For employees, their employer would withhold these types of taxes.) The [IRS website](#) provides additional details about taxes for self-employed individuals and lists the current self-employed tax rate. ICs are able to deduct half of this from your income, according to Erica Gellerman, a CPA.

Employees complete IRS form W-2 for their employers, but ICs need to submit a W-9 form to the business they are contracting with. The business is required to report payments of \$600 or more in a calendar year on Form 1099-NEC. ICs need to file the 1099-NEC, a Schedule C, which relates to their work as an IC, and a Schedule SE, which relates to the self-employment taxes, with their personal tax return. They will also need to meet state filing requirements.

ICs may be able to deduct expenses that they did not receive payment for from their taxes. These might include the cost of work-related expenses, health insurance, and continuing education.

Tax rules can be confusing, so it's wise for ICs to consult a tax professional. This expense can pay off in the long run by helping to avoid penalties as a result of incorrect or inaccurate claims. In addition, ICs will need to pay estimated taxes quarterly, and the tax professional can help determine the amounts.

### Professional liability insurance coverage

As an independent contractor, you will be responsible for your own insurance, which includes obtaining your own professional liability insurance, otherwise known as malpractice insurance. Professional liability provides coverage for licensed healthcare professionals from allegations that their negligent acts during the performance of their professional duties caused harm. Malpractice insurance is required by law in many states, and failure to have coverage may violate state statutes and lead to professional discipline. Additionally, insufficient coverage can potentially be financially ruinous for dentists if a malpractice claim occurs. Therefore, it is important for dentists to consult a qualified insurance agent to ensure they have the appropriate type and amount of coverage for their needs.

### Vicarious liability and apparent agency

If a patient holds a reasonable belief that the business/owner dentist appears to have a supervisory relationship to the IC, then it is more likely that the patient may hold one dentist responsible for the actions or omissions of the other. Both the IC and the owner dentist should develop and agree to patient communication methods that explicitly clarify the contractor relationship in order to mitigate the risk of vicarious liability. For more information regarding vicarious liability and strategies to diminish the risk of apparent agency liability, refer to the CNA & Dentist's Advantage [Risk Management Manual](#) section, Legal Concepts.

### New opportunities

As an IC, you have greater flexibility as to where and when you work. It can also help you forge new and varied connections that bring value to your professional world. By understanding the implications of working as an IC, you can enjoy these benefits with peace of mind.

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#### RESOURCES

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