MISCLASSIFYING AN ASSOCIATE DENTIST AS AN INDEPENDENT CONTRACTOR

Having an additional dentist in the office can have numerous advantages. Yet, misclassifying the associate dentist is one potentially pricey mistake that should be averted.

When hiring an associate dentist, one of the initial questions is whether to hire him/her as an employee (an ordinary W-2 worker) or an independent contractor (a 1099 worker). Many dental practices routinely engage associate dentists as independent contractors. For a practice owner looking to cut costs, hiring independent contractors can be rather appealing. The practice would be free from paying for its share of payroll taxes (e.g., Social Security and Medicare taxes). Additionally, the practice would not be required to provide the contractor with the same benefits enjoyed by other employees in the practice.

Be careful - it is very hard to justify hiring an associate dentist as an independent contractor. Many governmental agencies have a significant stake in the dental practice making the correct classification. By scrutinizing employers that misclassify their employees, federal and state agencies have been able to recover a significant amount of otherwise lost tax revenues, fees and penalties. Sometimes, penalties can even be applied retroactively.

Ultimately, classification depends upon the facts and circumstances of each arrangement. Typically, an employer/employee relationship will exist when the associate is not truly independent, and the practice controls (or could control) the associate dentist.

Some telltale factors include:
1. The associate using the equipment and supplies of the practice
2. The associate treating existing patients of the practice
3. The practice managing the schedule of the associate
4. The practice handling billing matters
5. The practice providing the associate with benefits

A practice that misclassifies its associate dentists may be exposing itself to great risk. Bottom line - any savings will seem very small compared to the costs and penalties incurred if the practice’s designation is rebuffed. While there are exceptions, it is seldom worthwhile to hire an associate dentist as an independent contractor.

For more information, contact Phil Bogart at pbogart@wtplaw.com or 410.347.8710. Phil represents dentists and other medical professionals in business transactions and situations encountered during the life of their practices. Services include structuring/documenting employee arrangements, partnerships, acquisitions and other exit strategies. Please note, the above should not be considered legal advice and does not create a client-lawyer relationship.