



**Whiteford | Taylor | Preston<sup>LLP</sup>**

## **ASSOCIATE DENTIST MISCLASSIFICATION: ARE YOU MAKING THIS MISTAKE?**

Having an additional dentist in the office can have numerous advantages. But misclassifying the associate dentist is a potentially pricey mistake that you should avoid.

One of the first questions you should ask when hiring an associate dentist is whether to hire him or 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 save a little money, hiring independent contractors can be appealing. For one thing, the practice would be free from paying for its share of payroll taxes (e.g., Social Security and Medicare taxes). Additionally, the practice could avoid providing contractors certain benefits customarily provided to employees in the practice.

***A practice that misclassifies its associate dentists may be exposing itself to great risk.***

But be careful! It's hard to substantiate hiring an associate dentist as an independent contractor. Many governmental agencies have a significant stake in the dental practices that make incorrect classification. By scrutinizing employers that misclassify 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 on 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 -- the associate using the equipment and supplies of the practice; the associate treating existing patients of the practice; the practice managing the schedule of the associate; the practice handling billing matters; and the practice providing the associate with benefits.

A practice that misclassifies its associate dentists may be exposing itself to great risk. The 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, is it seldom worthwhile to hire an associate dentist as an independent contractor.

*For more information, contact Phil Bogart at [pbogart@wtplaw.com](mailto: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.*

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