



YOUR PRACTICE / BUSINESS

## Working for Someone Else: Know the Rules of the Game

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Many of us decide to become acupuncturists because we are healers at heart and want to focus on treating patients, not because we want to own and operate a business. So we work for someone else, which can have great advantages, especially as a new graduate.

### When You're the Employee

According to the U.S. Department of Labor, "In the application of the Fair Labor Standards Act an employee, as distinguished from a person who is engaged in a business of his or her own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves."

In our field this usually means the employer is providing the business brand, the location(s), dress code, equipment, supplies, schedule, office support, and marketing. The employer owns the patient information and chart notes. The employer has to adhere to federal labor laws and provide minimum wage, overtime pay, and benefits. There may be a non-compete or non-solicitation clause in the employee contract.

For an employee there should be reasonable compensation, health care benefits, paid time off, and maybe other perks like discounts on services or products or the employer pays for continuing education. The disadvantages are less pay than working for yourself, a set schedule, a dress code or uniform, and there may be a requirement to practice certain modalities or specialties. It may be difficult or impossible to build your own practice while you are employed for someone else.

### Independent contractor

According to the Internal Revenue Service (IRS), "The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to self-employment tax. You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done)."

From a labor law and tax standpoint this is a little more difficult to pull off in our field than employment. To come into an established clinic and see patients as an independent contractor requires specific definitions and some extra effort on both parties.



The independent contractor is not beholden to set hours, dress code, or styles of practice. They should not be dependent on the clinic in a way that looks like a typical employee/employer relationship, which usually mean they have contracts (work) at other places.

The independent contractor must pay their own taxes, are responsible for their own health insurance, and generally provide their own supplies and equipment. If done properly this can be a good combination of independence and working with a team. The contractor gets to see patients at an established clinic as opposed to being completely solo, and the clinic gets extra help to treat their patients without having to worry about managing an employee or paying employment benefits and taxes.

However, it may be difficult for a clinic owner to find a practitioner that is a good fit without needing any training or oversight. A contractor should also have a specific start and end date, unlike an open-ended employment arrangement. This may not work for every clinic or practitioner.

## Understanding the Grey areas

A clinic may bring on a practitioner to see patients, and in order to avoid paying employment taxes and benefits, call them an independent contractor. However, if this arrangement includes set hours, a dress code or uniform, receiving training on how to practice, no set end date, or having managerial oversight—you are not a true independent contractor.

Sometimes so-called independent contractors are asked to sign a non-compete agreement stipulating they will not practice under their license in the vicinity during or after working at the clinic. This is not legal and defies the actual definition of an independent contractor. Clinics may hire a so-called independent contractor out of misunderstanding or ignorance of the definition. But there is a danger of being in breach of tax and labor laws and incurring fines from the IRS by misclassifying an employee.

## Communicate & advocate

It can be daunting looking for work and there is the temptation to take anything that allows us to practice acupuncture and get paid. If you want to work for someone else then seek out a good employer who provides fair compensation, and respects the time and energy you put into their clinic. If it looks and feels like employment but is called an independent contract, talk to your employer, point out the discrepancies and ask if they would consider changing the position to employee.

I strongly caution practitioners against signing a non-compete agreement. This can jeopardize your ability to practice under your hard-earned license and is not worth it. Consider asking your potential employer to remove the non-compete clause in the employment contract, or replace it with a simple agreement to not solicit patients when you part ways.

If you are comfortable being more independent, paying your own taxes and health insurance, but still want to work with other people in a clinic then be an independent contractor. Contracting requires a bit of extra research and effort to create a legal contract between both parties. But with a clear understanding that it is not employment, contracting can be a viable option for working as an acupuncturist.

## Resources

1. U.S. Department of Labor. Fair Labor and Standards Act. Wage and Hour Division, July [2018](#).
2. Internal Revenue Service. Independent Contractor Defined. Business and Self-Employed, July [2018](#).

SEPTEMBER 2018