

# Employees or Contract Labor?

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Most practices hire relief veterinarians somewhere between "occasionally" and "very regularly." But, how each practice hires them varies widely. Many practice owners and managers are only vaguely aware of the Internal Revenue Service rules concerning employee versus independent contractor status. The distinction is important because employers are liable for payroll taxes and benefits for employees, while independent contractors, or contract labor, are responsible for their own taxes and benefits.

For the sake of simplicity, many practices have treated relief doctors as contract labor, without delving too far into the rules. However, if someone you treated as an independent contractor believes they were really a part-time employee, they can raise issues about unpaid social security/Medicare taxes and unemployment benefits. They may also be able to argue successfully that they were entitled to health insurance, retirement plan contributions and other benefits you give to your employees. Likewise, if you, as an individual, provided services as a relief veterinarian to a practice for an extended period of time, you might have actually been an employee unless you had a well-drafted contract that said otherwise.

But how would you know whether you reached the correct conclusion? Here, in brief, are the federal guidelines:

- The substance of the relationship controls the tax treatment, not the label you or the person you are hiring puts on it.
- **IRS Publication 15-A** states that "an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result."

An example might be your accountant or your attorney. You hire each of those professionals with an end result in mind, such as a will, a contract, or a tax return. However, you have no control over where, when, or how that work gets done, nor who actually does it. You are buying only the finished product.

Contrast that to the normal relief veterinarian scenario. In most cases, practices hire a specific doctor for a particular day or shift, he/she works in your facility, uses your staff and supplies, and must follow the practice's established protocols as to patient care, client service, medical records, invoicing the client, etc. Does that make the relief veterinarian an employee? Maybe.

The rules that the IRS applies to determine employee versus contractor status are based on three concepts: behavioral control (such as the facts I just described), financial control (does the worker incur unreimbursed expenses to do the work?), and the type of the relationship (does it extend over time and are the services key to the company's business?). If control exists in these areas, then an employer-employee relationship may exist.

To argue successfully that a person you hired was truly an independent contractor, and/or to take advantage of the relief provisions if the IRS believes you misclassified someone, you must have a reasonable basis for the position you took. Historically, practices have argued that contract labor treatment is traditional in the veterinary profession for relief doctors. But for that argument to succeed you must not have hired anyone in a substantially similar position as an employee after 1977 and you must have filed all required federal information forms that are consistent with your position. That means that you must have filed Form 1099 with the IRS for any person, including a non-employee relief veterinarian, to whom you paid more than \$600 in any year. In my experience, veterinary practices frequently overlook this filing requirement.

### **Steps You Can Take**

If you are a relief veterinarian, or if you hire them, here's what it likely will take to convince someone that a relief veterinarian is NOT an employee:

- A written contract signed in advance by both parties that spells out the relationship, the work to be done and the price to be paid. Have this drafted by an attorney who will use language that strengthens the arguments for an independent contractor relationship.
- Proof that the practice did not pay the individual personally but rather made the checks payable to the trade or business name of the individual who works for many different practices.

- Representation that there are no quality standards imposed by the practice and that the practice does not oversee the actual work or instruct the individual as to how the work will be performed.
- Evidence that the practice does not pay a salary or hourly rate (or any rate based on time, if possible) but rather a fixed or contract rate for the completed work.
- Assurance that the practice provides no more than minimal training.
- Representation that the time of performance of the work is not controlled by the practice, although there can be a range of mutually agreeable work hours.

Additional factors that suggest independent contractor status:

- Invoices presented to the practice by the relief veterinarian's business which reflect a fixed rate for a specific block of work or project outcome.
- Services that are provided to several practices during the same time period, although it is possible to work for a number of people and still be an employee of one or all of them.
- Income tax returns filed by the relief veterinarian that reported the income (and matches the 1099 form given to him/her by the practice), deducted related expenses, and then computed self-employment tax on that net income.

On the other hand, factors that suggest employer/employee status include:

- Services performed by the worker that are key to the success or continuation of the business (i.e., the practice offers veterinary services to the public that are performed by licensed veterinarians, whether relief doctors or employees).
- Services that cannot be subcontracted to another relief doctor (i.e., the practice hires a particular doctor, not just any veterinarian the relief doctor can provide).
- Services performed in a continuing or recurring relationship.
- Set hours of work, which prohibit the worker from controlling his or her own time.
- Performing services on the practice's premises using equipment and

- Performing services on the practice's premises using equipment and supplies provided by the practice.

### **What if You Can't Prove Independent Contractor Status?**

Veterinary practices in Georgia are more fortunate than those in other states because Georgia basically follows the federal rules to determine a worker's status. Some other states have their own rules, definitions, and tests which are stricter than the federal guidelines. But Georgia employers still must deal with the fallout if a relief veterinarian is determined to be an employee, not an independent contractor. That means that the practice would owe FICA, Medicare, and unemployment tax and be subject to interest, late payment penalties and perhaps late filing penalties as well. But the fallout also includes the impact of not having included that doctor in the practice's various fringe benefit plans. How might that happen?

A few years back the Internal Revenue Service audited Microsoft and determined that Microsoft had certain freelancers and temporary workers who should not have been treated as independent contractors, but rather were determined to be regular employees. The IRS relied on the fact that although workers were hired for specific projects, some were kept on, working on successive projects for a number of years. They worked on-site along with the regular workforce and they used Microsoft's office equipment and supplies. How similar is that to the way relief veterinarians work within veterinary practices? In this case, Microsoft was required to pay overdue taxes and issue retroactive W-2 forms. But it got worse. The newly-designed employees then filed a class-action suit, demanding the same benefits as other Microsoft employees received. The court agreed, and these workers were then entitled to retroactive medical benefits, retirement plan contributions, and stock options.

Generally, a relief veterinarian who meets the definition of an employee would be considered a part-time employee. But what's the definition of "part-time"? And is a "part-time" employee eligible for benefits? Some practices assume that only full-time employees are eligible, but that's a dangerous assumption to make. In fact, the definition may be different for your health insurance provider and within your retirement plan documents, for example. But when's the last time you read those? Attorneys advise that the language in the plan or the contract is controlling, whether or not you know what it says. Especially when a practice hires a relief veterinarian to cover an extended absence (family leave,

practice hire a relief veterinarian to cover an extended absence (injury, leave, recovery and rehabilitation from an auto accident or lengthy illness, etc.), the relief doctor may well accumulate enough time to be eligible for benefits. And the longer he or she works at the practice, the stronger the case that an employer-employee relationship exists.

In summary, is the distinction between independent contractors and employees clear cut? Absolutely not. Courts have looked at similar fact patterns and reached contradictory conclusions based on their own interpretations of the rules and their unique weighting of the factors. Knowing and understanding the factors that are used to make the determination is a good first step. But both practices and relief veterinarians can take the steps outlined above to protect themselves from misunderstandings about their relationship and to minimize the risk of unintended consequences from a disgruntled worker or from an unemployment or federal income tax audit.

If you would like to learn more, take a look at [IRS Publication 15-A](#).

**Tags:** Contract Worker, Employee, Liability, Relief Vet, Veterinarian



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