NAVIGATING DOCTOR OF NURSING PRACTICE EMPLOYMENT AND INDEPENDENT CONTRACTOR RELATIONSHIPS

DISCLAIMER: This presentation is not intended to provide legal advice. It is meant to provide basic guidance for reviewing employment and independent contractor agreements. For advice pertaining to your specific legal issues, I will need to talk to you one-on-one in a confidential setting.

COMMON TYPES OF WORK ARRANGEMENTS

1. Employee

2. Independent Contractor

EMPLOYEE VS. INDEPENDENT CONTRACTOR

EMPLOYEE

- W-2
- Employer withholds required payroll taxes
- Entitled to rights under employment laws
- Ability to work for more than one employer might be restricted
- May take part in Employer-sponsored benefits
- Employer has the right to control how you perform your work

INDEPENDENT CONTRACTOR

- 1099
- You must deduct self-employment taxes
- Not entitled to rights under employment laws
- Flexibility to work for more than one entity
- You are in business for yourself
- Should create your own corporate entity
- Company should only monitor your end product, not how you perform the work

EMPLOYEE VS. INDEPENDENT CONTRACTOR

- The actual working relationship between the parties governs whether a worker is an independent contractor or an employee (not merely the job title)
- Courts use multi-factor tests to make the determination

EMPLOYEE VS. INDEPENDENT CONTRACTOR

Federal Wage and Hour Law
Fair Labor Standards Act

- **Economic realties test - *i.e.*, is the worker economically dependent on the company to make a living?**
  - **Non-exhaustive factors**
    a. **Opportunity for Profit or Loss**
    b. **Investment by the Worker**
    c. **Degree of Permanence**
    d. **Nature and Degree of Control**
    e. **Extent to Which Work Is Integral to the Business**
    f. **Skill and Initiative**

EMPLOYEE VS. INDEPENDENT CONTRACTOR

Declaration of Independent Business Status (A.R.S. § 23-1601)

- With such a Declaration:
  - Statutory language creates a rebuttable presumption
  - The statutory language requires the contractor to acknowledge the worker's autonomy, financial responsibilities, freedom to accept other work, and the nature of the worker's relationship with the employing party.
  - Evidence of an independent contractor relationship

KEY TERMS IN EMPLOYMENT AGREEMENTS

EMPLOYMENT AGREEMENTS

- Will be prepared by the employer
- Will be protective of the employer
- If something is not in the contract, it does not count. Make sure it gets in the contract.

COMPENSATION

- Fixed salary
- Incentive bonus compensation

BENEFITS

- Signing bonus
- Moving allowance
- Health insurance/disability or life insurance
- Vacation and/or Sick Time
- Maternity Leave
- Continuing education costs
- License and other fees/board certification fees
- Cell phone
- Car allowance
- Employer sponsored Retirement Plan(s) and/or pension

EMPLOYEE HANDBOOK POLICIES

- If there are inconsistencies between the employee handbook and contract, does the contract govern?

COMMONLY OVERLOOKED PROVISIONS

- Requirement to obtain express consent before engaging in outside employment

- Requirement to timely chart patient notes

TERMINATION CLAUSES

- Right to terminate employment
- Recoupment of bonuses
- Garden leave clauses
- Professional Liability Insurance
  - Tail Coverage Requirements
- Liquidated damages clauses

KEY TERMS IN INDEPENDENT CONTRACTOR AGREEMENTS

INDEMNITY CLAUSE

- Risk of misclassification claim by IRS and be aware of agreement to indemnify employer if employer is hit with tax-related damages arising out of misclassification

DECLARATION OF INDEPENDENT BUSINESS STATUS

- Using statutory language, Contractors expressly confirms aspects of their relationship with the employing party, such as:
    a) Not having any right to unemployment benefits
    b) Being responsible for all taxes, licensing, and incurred expenses
    c) Not covered by the employing party's health or workers' compensation insurance
    d) May accept work from other businesses and decline the employing party's requests for services
    e) May set their own schedule
    f) Not paid a regular salary or regular payment

BUSINESS ASSOCIATE AGREEMENT

- Legally required contract under HIPAA for contractors who access, create, or transmit Protected Health Information (PHI).
- Key Provisions include:
  - Specifying permitted uses and disclosures of PHI.
  - Requiring contractors to safeguard PHI, including electronic security.
  - Mandating reporting of unauthorized use or disclosure.
  - Outlining contractor obligations after agreement termination
- Independent Contractors are directly liable for HIPAA violations and must comply with all relevant privacy and security rules, the BAA merely outlines the Independent Contractors' responsibilities.

TERMINATION CLAUSES

- Right to terminate agreement

KEY TERMS IN BOTH EMPLOYMENT AGREEMENTS AND INDEPENDENT CONTRACTOR AGREEMENTS

SCOPE OF SERVICES

- Multiple offices – designate primary location / exclude others
- Call coverage
- Administrative work
- Committee requirements

RENEWAL OF TERM CLAUSES

- Employees are at-will unless written contract states otherwise

RESTRICTIVE COVENANTS

NON-COMPETE CLAUSES

- 2024: The Federal Trade Commission enacted a rule banning non-compete clauses (with limited exceptions)
- The rule never took effect due to ongoing lawsuits
- The Federal Trade Commission officially withdrew the rule in September 2025.
- Non-competes are largely regulated at the state level
- Previously found unfair labor practice for non-supervisory employees by the National Labor Relations Board, but NLRB no longer taking this position.

NON-COMPETE CLAUSES

- Arizona has not banned non-competes
- Enforceable in Arizona if written carefully
  - Narrowly tailored to legitimate business interests
  - Not overbroad
  - Temporally and geographically limitations must be reasonable under the facts

NON-SOLICITATION

- Applies during employment and post-termination
- Employee Solicitation
- Patient Solicitation

CONFIDENTIALITY CLAUSES

- Identifies information the employer believes to be confidential because it is not generally known to the public.
- Confidential information may include:
  - Patient lists
  - Policies and/or procedures
  - Research
  - Marketing
  - Financial information

THANK YOU

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