

Temporary Dietitian Misclassification Risks: How to Keep Your Facility in Compliance

Summary

The improper classification of registered dietitians working in a long-term care and hospital setting, especially *temporary* registered dietitians, is drawing heat as the IRS and state agencies crack down on worker misclassification. Registered dietitians working temporarily should not be classified as 1099 independent contractors, and in fact, facilities classifying them this way are subject to fines, back taxes and other penalties. Find out how to stay in compliance, or work with a staffing company that only hires W-2 employees.

Here Are Three Items to Consider Before Hiring a Temporary Dietitian

Be Careful About Working with a Staffing Company That Provides Your Facility with Independent Contractors Instead of W-2 Employees

This puts both the staffing company and the client at risk. An article published this year by the American Staffing Association (see pg. 15 of [link](#)) shows that fines and penalties assessed to the firm can also be passed on to the firm's client:

“If a staffing firm misclassifies an employee as an independent contractor, the firm can face significant fines and penalties for, among other things, failure to withhold and remit taxes, pay Social Security, provide insurance coverage, and pay overtime. Moreover, if the staffing firm fails to pay, the firm's client may be held liable for those costs as a joint employer. Misclassification thus poses significant risks to both the staffing firm and its clients.”

If You Are Engaging a 1099 Dietitian Directly, You Could Be Targeted For An Audit

The Department of Labor, the IRS and state agencies are cracking down on organizations that misclassify a worker as a 1099 independent contractor but actually treat that worker as a W-2 employee.

As budgetary requirements continue to outpace the growth of tax revenue, these governmental agencies are looking elsewhere to find income. One of the easiest targets is misclassification of workers. States like California have established taskforces dedicated to this subject and are very aggressive in uncovering revenue.

Organizations hiring 1099 independent contractors illegally can be held responsible for paying back-taxes and interest on employee's wages as well as FICA taxes that weren't withheld originally. Failing to make these payments can result in additional penalties and interest,

which can quickly compound. Additionally, if the IRS believes you've intentionally misclassified workers, your facility may face criminal and civil penalties.

Hiring a W-2 Employee Will Save You Time, Money, and Will Keep Your Facility in Compliance

Working with a staffing company makes hiring W-2 employees a cinch. At Dietitians On Demand, not only are our dietitians covered by our workers' compensation and liability insurances, we also administer their payroll taxes and other HR related items. This translates to savings for a client facility because they are no longer responsible for carrying these costs for the employee. The client simply pays an all-inclusive hourly rate.

At first glance, your hourly bill rate for a W-2 temporary dietitian may initially appear higher than that of a 1099 independent contractor, but when you add up the risk of fines, penalties and interest that can skyrocket into the thousands, in essence, the additional dollars are a very cheap insurance policy that ensures you are in compliance with the IRS.

When it comes to temporary dietitian staffing in hospitals, nursing homes, and other facilities, misclassification of workers can pose serious financial risks to the facility. This is because the work a dietitian completes does not fit the IRS' definition of a 1099-independent contractor, but often that is how a dietitian is classified. Dietitians On Demand provides W-2 employees to eliminate this risk for our clients.

Why Is a Registered Dietitian a W-2 Employee, Not a 1099 Independent Contractor?

In the world of clinical nutrition, a registered dietitian working in a medical facility is not an independent contractor. They are a W-2 employee. Based on the IRS' definition, here's why they are classified as W-2 employees:

- They are expected to communicate with the facility as to when they will be on the premises and usually

work set hours.

- They perform services that can be controlled by an employer and are required to be carried out in a certain order, such as patient nutrition assessments.
- They are required to submit reports, in the form of charting.
- They work onsite at the medical facility.
- They are paid an hourly, weekly or monthly rate rather than on a project basis.

To be classified as a true 1099 independent contractor, a worker must have **complete autonomy**.

A few items the IRS uses to define autonomy include:

- The worker is not required to set a schedule.
- The worker performs tasks in any order they wish.
- The worker is not required to leave written or oral reports.
- Work is not performed on the company premises.
- A 1099 worker is paid on a project basis and at the project's completion, not on an hourly or weekly basis.

The IRS developed a test to determine if a worker is a W-2 employee or a 1099 independent contractor.

DEFINITION OF A 1099 REGISTERED DIETITIAN

Meeting one or more of these criteria signifies an independent contractor.

TIME: Works any hours they choose

DUTIES: Work is performed in any order, at any time that the dietitian chooses

LOCATION: Work is done remotely, not on the premises

PAY: Pay is on a project-based basis and at project's completion

DEFINITION OF A W-2 REGISTERED DIETITIAN

Meeting one or more of these criteria signifies a W-2 employee.

TIME: Work hours are set by a manager; worker is required to be at weekly meetings which are at set days and times

DUTIES: Services are controlled by an employer and required to be carried out in a certain order, ie: charting

LOCATION: Work is performed onsite at a medical facility

PAY: Pay is an hourly, weekly or monthly rate

Dietitians On Demand Can Help

In the end, we only want to do what's right for our clients. By providing you with the correct classification of employees, we accomplish that! To learn more about how Dietitians On Demand can fill your temporary or permanent dietitian staffing needs, contact us at:

804.545.9162

info@dietitiansondemand.com

www.dietitiansondemand.com