



The More You Know...

Zack Group Stands Behind Our EMPLOYEES.

A cautionary letter to our client partners about worker misclassification in the healthcare staffing industry.

There has been a lot of “talk around the water cooler” in healthcare about certain “platform” staffing agencies providing caregivers classified as 1099 workers, as opposed to W-2 employees of the agency. Some of these staffing agencies have tempted desperate, critically short-staffed, facilities with their online or app-based programs, offering a database full of independent contractors.

What at first seemed like a quick and easy solution for a facility to fulfill its supplemental staffing needs is now revealing the hidden dangers that can potentially come with that choice.

The 1099 Independent Contractor

1099 independent contractor is a legal classification regulated by certain key characteristics between an individual (worker) and the facility to whom they provide the healthcare services.

The worker typically decides their hours, specific tasks, and uses their own equipment to perform the work. In addition, they manage their own taxes, liability insurance and benefits.

There is a gray area for which circumstances a worker *legally* qualifies as an [independent contractor and when they must be classified as an employee](#).

According to the IRS, 1099 contractors are self-employed...not employees of the agency.

This means, while working at the facility, the caregiver:

- Is not assigned specific hours of work
- Is not subject to supervision and works independently
- Is not subject to federal overtime pay requirements, even after working 40 hours in a work week.
- Does not require training about facility policies and procedures
- Often do not have professional liability insurance in the event of malpractice or negligence
- Is not offered worker compensation insurance by agency

Risks To Your Facility

There are devastating, potential (but probable) financial and legal hazards to a facility if the staffing agency they are using misclassifies their workers as 1099 independent contractors.

The most concerning is Joint employment liability, where the facility is held liable for the unlawful pay practices of the platform staffing agency.

Joint employment happens when 2 or more employers (agency and the facility) exercise sufficient control over the terms and conditions of employment such as setting rate of pay (agency), supervising work (facility), controlling work schedules (agency and facility).

If the Department of Labor (DOL) determines the staffing agency misclassifies their workers as independent contractors instead of employees, the facility may be exposed to legal claims as well.

It's no longer just the platform staffing agencies problem.

The Department of Labor (DOL) has begun investigating businesses, including healthcare facilities, who contract with agencies that rely on the use of 1099 independent contractors to supplement their staff.

According to [Skilled Nursing News](#), a skilled nursing facility company was sued in March 2023 by DOL for an alleged \$19 million in unpaid overtime (Walsh v. Comprehensive Healthcare Management Services, LLC et al, 2023). This nursing facility management company had utilized 1099 workers from a platform or registry type staffing agency...*but the agency has not been sued yet by DOL.*

In September 2022, a federal court found that a Philadelphia “1099” healthcare staffing agency misclassified more than 1700 workers, [resulting in an order to pay \\$9.3 million](#). The agency was falsely claiming to be a platform or registry where facilities can find workers.

Also in 2022, <https://www.dol.gov/newsroom/releases/whd/whd20220127> a nationwide nurse staffing agency was found to have misclassified their workers as independent contractors for over five years and ordered to pay over \$7.2 million.

A [judgement against a Florida based “registry” staffing service](#) was obtained by DOL in April 2023 for misclassifying caregiver as independent contractors.

Takeaway: *To limit legal exposure, these 1099-type staffing agencies may point the finger at the facilities as the actual employers who are in control of the clinicians in their workplace.*

What Now?

If your facility is utilizing one of the staffing agencies providing 1099 independent contractor workers, you are at high risk of investigation and possible prosecution by the DOL for worker misclassification caused by the agency.

Vet your staffing agencies well. Ask them how they classify their workers and confirm they are legally compliant. Make sure they are providing W-2 employees, not 1099 independent contractors.

As healthcare staffing shortages have increased exponentially, this platform practice has become more prevalent. We felt it vital to express our concern to our client facility partners, share the information we have learned, and help prevent your facility from falling prey to these platform agencies.

As a Joint Commission Certified healthcare staffing agency, Zack Group only employs W-2 personnel. In addition to our strict credential compliance protocol, we can ensure your community is given our best while minimizing risk.