



## Which Way to Go: The Pros and Cons of 1099 vs W-2 Income for Urgent Care Physicians

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**Urgent message:** To avoid running afoul of labor and tax laws, urgent care operators should understand what constitutes an “independent contractor” vs an “employee” and classify and pay their physicians appropriately.

### Introduction

Many smaller, independent urgent care providers pay their physicians under 1099 arrangements rather than with W-2 income. There are advantages to this practice, such as decreased payroll taxes, workers compensation coverage, malpractice insurance, and not paying these individuals benefits. The notion is that an urgent care provider is an independent medical professional, practicing his or her art at the center.

In fact, there are some centers that go so far as to pay 1099 income on “production” (ie, “eat what you kill”).<sup>1,2</sup> This means that if the center is open and sees few patients, the center does not pay the doctors. Labor is usually the greatest expense in urgent care. However, larger urgent care operations avoid this practice because they see the potential for legal risk and that the IRS may view it as an attempt to avoid payroll taxes.

This article will explain the difference between 1099s and W-2s and will address what constitutes being an “independent contractor,” as well as the risks involved if the practice inappropriately classifies paid physician employees as contractors.

### Background

IRS Forms 1099 and W-2 are two different tax forms for two

different types of workers. Independent contractors receive a 1099 form, and employees of a business get a W-2.<sup>3,4</sup> W-2 employees have payroll taxes automatically deducted from their paychecks; those are paid to the IRS by the employer. Independent contractors, on the other hand, are responsible for calculating and submitting their own payroll taxes to the IRS every quarter.

IRS guidelines state that if the business owner has the right to control or direct not only *what* is to be done, but also *how* it is to be done, then the workers are most likely employees. However, if the business owner can direct or control only the result of the work done—and not the means and methods of accomplishing the result—then the workers are probably independent contractors. It’s an important distinction, because there are penalties for misclassification.<sup>5</sup>

### Discussion

Although the hourly calculated reimbursement for independent contractors may be dramatically higher compared to traditional employees, working with independent contractors in many instances will still result in less overall spend. That’s because independent contractors are responsible for paying *both* the employer and the employee portion of Social Security and Medicare (FICA). The urgent care center isn’t responsible for this costly expense.<sup>6</sup> For independent contractor physicians, the urgent care center must file a 1099 form but not pay payroll taxes, worker’s compensation, or unemployment for these individuals.

However, the rules for recognizing employees have recently become more regulated: if an urgent care center engages a contractor who is full time (30 hours or more per week consistently for 90 days), the government may deem that person to be an employee who can claim unemployment insurance.<sup>7</sup>

W-2 and 1099 workers are treated differently as far as an urgent care owner’s ability to terminate them. For a W-2 em-



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employee, an owner can exercise *at-will* employment and terminate their employment at any time—pursuant to federal and state labor laws which regulate employee dismissal. However, with a 1099 worker, an urgent care owner should be cognizant of the terms of the contract that’s been signed and what it provides for the right to terminate that individual physician.

The last significant distinction between a W-2 vs a 1099 employee is that they are typically paid in different ways and receive different benefits. A W-2 employee will most likely be salaried and either full-time or part-time with a consistent schedule. But a 1099 physician may be paid on a different schedule—such as on a monthly invoice or upon completion of a shift. And typically, only W2 employees receive employment benefits like healthcare insurance.

**What Exactly is an Independent Contractor?**

Typically, individuals such as doctors, dentists, veterinarians, lawyers, accountants, contractors, and subcontractors who are in an independent trade, business, or profession where they offer their services to the general public are independent contractors.<sup>8</sup> However, whether an individual is an independent contractor or an employee depends on each situation.<sup>9</sup> Again, the IRS stipulates that an individual is an independent contractor if the company paying their wages 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.<sup>10</sup>

*Degree of Control and Independence*

The important distinction between the two types of workers is evidence of the degree of control and independence. This can be placed in three categories:

- *Behavioral.* An owner should determine whether management controls or has the right to control what the physician does and how he or she does their job.
- *Financial.* Determine if the urgent care center aspects of the physician’s job are controlled by the owner, such as how he or she is paid, whether expenses are reimbursed, and who provides tools and supplies.
- *Type of relationship.* The urgent care center owner must determine if there is a written contract or employee-type benefits (ie, pension plan, insurance, vacation pay, etc.), whether the relationship continuous, and if the work performed is a key aspect of the business.

An urgent care center should examine all these factors when deciding if a worker is an employee or independent contractor. While some of these factors may indicate that the worker is an employee, other factors may lead an owner to determine that the worker is an independent contractor.<sup>11</sup>

Courts have found that there is no “magic” or set number of factors that constitute when a worker is an employee or an independent contractor, and no one factor stands alone in mak-

Independent Contractor (Form 1099)	Employee (Form W-2)
<ul style="list-style-type: none"> <li>Controls every aspect of how, when, and where the work will be done.</li> <li>Sets own schedule.</li> <li>Assumes all risk (ie, workers compensation, medical malpractice insurance) and is not covered by anyone.</li> <li>Deducts costs associated with work including home office, supplies and technology (including cell phone), transportation to/from job site, health insurance and other benefits.</li> <li>Not important for daily workflow in the business.</li> <li>Uses own resources to get job completed.</li> </ul>	<ul style="list-style-type: none"> <li>Does not control how, when or where he/she works. Works shifts scheduled by the facility.</li> <li>Has no personal risk and is covered by Workers Compensation. Employer pays malpractice insurance premiums.</li> <li>Eligible for employee benefits including medical, dental, and life insurance; retirement planning (ie, 401K); paid time off, etc. Employee expenses like CME and cell phone are often reimbursed by the employer.</li> <li>Day-to-day work is important to the business.</li> <li>Uses company resources to get job completed.</li> </ul>

ing this determination. As one court stated, “Many factors are considered with no one factor being dispositive.”<sup>12</sup> In addition, there may be factors that are relevant in one situation and not in another. An urgent care center owner should analyze the entire relationship, consider the degree or extent of the right to direct and control, and document each of the factors used in arriving at the determination.<sup>13</sup>

**Risks of Incorrectly Classifying Paid Physician Employees as Contractors**

This determination can be difficult. The Treasury Department estimates that employers nationwide misclassify millions of workers as independent contractors instead of employees, resulting in the failure of the payment of employment taxes.<sup>3</sup>

The risk of independent contractor misclassification is frequently misunderstood and can be an expensive mistake. A 1099 worker must truly qualify as *independent* or the urgent care center may be financially responsible for significant fines and penalties.<sup>14,15</sup>

If an urgent care center classifies an employee as an independent contractor and there’s no reasonable basis for doing so, it may be held liable for Social Security and withholding taxes for that worker.<sup>13</sup>

*Voluntary Classification Settlement Program*

It’s important to be aware of the Voluntary Classification Set-

tlement Program, which gives employers the option of reclassifying their workers as employees for employment tax purposes. They are granted partial relief from federal employment taxes for consenting eligible taxpayers to prospectively treat their workers (or a class or group of workers) as employees.<sup>13</sup>

### Summary

Urgent care center owners should know the difference between and what's required for independent contractors and employees in their facilities. Again, there is no hard-and-fast answer; owners should apply the government guidelines to each specific employment situation. ■

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