

Preferred Modern Frameworks for Worker Classification

1. IRS Common Law Test (Most Common Federal Tax Standard)

The IRS now primarily focuses on **three broad categories**:

Behavioral Control

Who controls:

- how therapy is conducted?
- documentation expectations?
- scheduling?
- supervision?
- policies?
- required trainings?
- EHR usage?

Financial Control

Who controls:

- fees?
- billing?
- reimbursement?
- expenses?
- referrals?
- ability to profit or lose money?

Type of Relationship

- Is the relationship ongoing?
- Is therapy central to the business?
- Are there benefits/perks?
- Is the worker presented as part of the team?
- Is the relationship indefinite?

This is the current IRS framework most commonly cited today.

2. Department of Labor “Economic Reality Test” (VERY Important)

This is probably the most important framework for therapists right now.

The Department of Labor revised its rule in 2024 emphasizing the **economic realities** of the relationship rather than labels or contracts.

The major factors include:

A. Opportunity for Profit or Loss

Can the therapist:

- negotiate rates?
- market independently?
- build their own client base?
- increase profit through business decisions?

Or are they simply paid a fixed split under someone else's practice structure?

B. Investments by Worker vs Employer

Did the therapist:

- build an actual business?
- invest in marketing?
- office infrastructure?
- systems?
- staff?

Or are they mainly using the practice owner's infrastructure?

C. Degree of Permanence

Is this:

- temporary/project-based,
or
- indefinite and ongoing?

A long-term weekly therapy caseload heavily leans employee.

D. Nature and Degree of Control

This becomes huge in therapy settings.

Questions include:

- Are minimum caseloads required?
- Are specific schedules required?
- Is attendance at meetings mandatory?
- Are policies enforced?
- Can referrals be declined?
- Can the therapist freely work elsewhere?
- Is supervision mandatory?

The more control, the stronger the employee argument.

E. Integral Part of the Business

This is one of the biggest issues for group practices.

Therapists ARE the service being sold.
That heavily supports employee classification under DOL analysis.

F. Skill and Business Initiative

This is often misunderstood.
Being “licensed” alone does NOT make someone an independent contractor.
The question is:
Is the clinician operating an independent business initiative?

Examples:

- own branding,
- own referrals,
- independent marketing,
- multiple contracts,
- separate business presence,
- ability to grow independently.

3. State-Specific Tests (VERY Important)

Some states use stricter tests than the IRS.

The biggest example is the:

ABC Test

Common in states like:

- California
- Massachusetts
- New Jersey

Under the ABC test, a worker is presumed to be an employee unless ALL three are true:

- A.**
The worker is free from control.
- B.**
The work is outside the usual course of the business.
(This is where therapy practices often fail immediately because therapists ARE the business.)
- C.**
The worker is customarily engaged in an independently established trade/business.

Why Mental Health Practices Are Increasingly Scrutinized

Therapy practices often:

- advertise “contractor flexibility,” while simultaneously:
- controlling schedules,
- assigning referrals,
- requiring documentation standards,
- mandating supervision,
- enforcing productivity,
- using centralized EHR systems,
- presenting clinicians as staff.

That combination increasingly conflicts with independent contractor standards.

What Actually Strengthens a True Therapist 1099 Relationship?

A stronger contractor model usually looks more like:

- ✓ Therapist has own PLLC/LLC
- ✓ Therapist markets independently
- ✓ Therapist works at multiple locations/practices
- ✓ Therapist controls availability
- ✓ Therapist sets or negotiates fees
- ✓ Therapist can refuse referrals
- ✓ Therapist carries own systems/tools
- ✓ Relationship is project-based or non-exclusive
- ✓ Therapist invoices the practice
- ✓ Therapist is not treated as staff/team member

What Makes Many Therapy 1099 Models Legally Risky?

- ▶ Required caseload minimums
- ▶ Mandatory meetings
- ▶ Fixed schedules
- ▶ Employee-style supervision
- ▶ Indefinite relationships
- ▶ “Full-time contractors”
- ▶ Productivity standards
- ▶ Non-compete style restrictions
- ▶ Therapist listed as staff

- ▶ Practice controls referrals and fees
- ▶ Core therapy work central to business

Educational Point for Supervisees

One of the biggest misconceptions in mental health is:

“Everybody does 1099s, so it must be legal.”

Industry normalization does not determine legal classification.

Many therapy practices adopted contractor models because:

- it reduced overhead,
- avoided payroll taxes,
- avoided benefits,
- and shifted liability/expenses onto clinicians.

That does not automatically make the structure compliant.

Important Clarification

Misclassification is highly fact-specific.

Two therapists at the same practice could potentially be classified differently depending on:

- autonomy,
- business structure,
- supervision,
- scheduling,
- referral source,
- and control.

That is why there is no single checklist anymore.

The analysis focuses on:

the REAL working relationship, not the contract title.