

SELF-EMPLOYED STATUS

Optometrists may provide services to practices on a self-employed basis. This produces advantages for the optometrist, mainly associated with the different treatment of the self-employed for income tax and National Insurance as compared with employees. There may be disadvantages for the optometrist who also has fewer employment protection rights than an employee, and will be an unsecured creditor should the "employer" become unable to continue in business. The optometrist should ensure that the Inland Revenue accepts his/her self-employed status for tax purposes.

For many years there have been advantages for the employer in using the services of a self-employed optometrist to whom sick pay, maternity leave, paid holidays, etc. were not due. However, the protection of a number of employment rights now extends to workers, and it is possible that certain self-employed individuals will qualify as workers and thus qualify for such protection. The following point has been mentioned elsewhere, but it is important and so are worth repeating here: Members should note with regard to self-employed status:

- (1) Businesses should seek legal advice before terminating a contract for services. There may be complex issues involved, for example a locum could be treated as self-employed for taxation purposes, while at the same time having employment rights under employment law. Failure to seek legal advice at the right time could result in costly claims against the business.
- (2) Where a contract for services is terminated by the business, the locum should seek legal advice independent of any advice which may have been given to the business.

It is still important, however, for both parties that a proper working relationship is established and that a contract is drawn up. The following specimen contract for the services of an optometrist covers the key areas which should be considered for inclusion in the contract. The specimen contract is copyright of the Association of Optometrists, but may be reproduced by members.

The following notes provide a brief explanation for some of the clauses in the specimen contract which may not be self-explanatory. The notes have been numbered to correspond to the numbered clauses in the specimen contract.

GUIDANCE NOTES ON THE SPECIMEN CONTRACT FOR SERVICES

(see specimen Contract for Services)

Commencement date: insert commencement date if different from the date on which the agreement is made.

Clause 2.

In clause 2 the locum confirms that s/he has registered as self employed with Her Majesty's Revenue and Customs (HMRC) and paid the appropriate duties. This will not necessarily mean that the engagement should be treated as self-employment but it will at least

demonstrate that the locum has declared income to HMRC and give the facility for tax to be off set.

In addition, in the event that the nature of the engagement is found to be one of employment, the locum undertakes to offset any self-employed tax and NIC paid against the PAYE duty due from the engager. While this will be welcomed by the engager it may not necessarily be welcomed by the locum, who would be foregoing a potential repayment if their status is changed to an employee. Therefore this may be subject to commercial negotiations between the parties.

- 5.1 In general it is best to avoid sessional payments, as it may compromise the self-employed status.
- 5.3 An alternative method of payment could be that the Practitioner should be paid directly by the NHS or patient for each examination, and would pay rent to the Company. This can have advantages in ensuring that the Practitioner is treated as self employed.
- 5.4 & 5.5 Travelling expenses and accommodation costs may be agreed where the optometrists is living and working away from home.
7. The Optometrist may wish to be paid each week to ensure that payments are always up to date and that you have minimum exposure should the practice become bankrupt or go into liquidation.
9. Examples of duties may include: eye examinations, contact lens fitting, dispensing, responding to complaints, and other professional matters, ensuring that the records are completed satisfactorily, etc. It should also be stated if the practitioner is responsible for any staff supervision, and, in the event of unregistered dispensing being undertaken, if the Practitioner has any supervisory duties.
10. It may be inappropriate to specify exact times and days as this could suggest an employed practitioner status.
19. Note. This clause is more indicative of an employment relationship as courts prefer the "self-employed" person to provide their own tools and equipment. One solution may be to charge the Practitioner a "rent" for use of the equipment, in which case this point needs to be amended accordingly.
23. In the event of the practice being owned by unregistered persons the Practitioner may wish to keep a duplicate copy of patient records for his/her own defence.
27. This clause is required because disclosure of such trade secrets and confidential information could place the Company as a serious competitive disadvantage and do serious damage (financial and/or otherwise) to the business and could cause immeasurable harm. Additionally, patients are entitled to confidentiality as regards their personal information, and there is data protection legislation governing the disclosure of information.
34. Notice period to be agreed as appropriate.

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OPTIONAL CLAUSE

A1 This clause is intended for use by practitioners who have their own practices but who contract their services outside of their practices, e.g. to the prison service. It is intended to indemnify the practitioner and the practice for any loss sustained arising from injury which may be incurred whilst working under this contract.

Please note: The Association of Optometrists has made every effort to ensure that the information in this specimen contract is correct, however, we cannot accept any liability for the accuracy or content. People relying on this specimen contract do so at their own risk, but you may check with the Association for guidance.

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