

## Locum Tenens Physician Working as an Independent Contractor

As a locum tenens physician engaged by the Company to work an agreed-upon assignment, you are **working as an independent contractor, not as an employee**. There are many distinct differences between an independent contractor and an employment relationship. We have summarized many of these differences for your general understanding, but strongly encourage you to consult with a financial, tax, and/or insurance professional(s) regarding these matters.

### Insurance and Benefits

Certain insurance and retirement benefits are commonly provided an employee in an employment relationship that, by law, may not be provided an independent contractor.

1. In general, an individual cannot establish a valid **unemployment** claim based on earnings as an independent contractor. Unemployment compensation is a potential benefit that exists for individuals who have worked as an employee and have lost their job through no fault of their own and who are able and available for work as an employee. A physician may file an unemployment claim if previously employed as an employee. However, the Company (or any staffing agency) should not be listed as a previous employer on the claim, nor should any staffing agency compensation be reported as wages on that claim.
2. **Workers' compensation** insurance is government-mandated employee insurance. It is provided to cover health costs incurred by employees as a result of accidents while working on the job. Independent physicians must secure this insurance coverage on their own if it is desired. However, it may duplicate typical health insurance coverage.
3. The Company provides its employees typical **health, dental, disability, and life insurance** on a tax-advantage basis. These benefits cannot be provided tax-free to nonemployees. This insurance coverage may be obtained directly by the physician or might be available through the physician's spouse's employment.
4. Independent physicians are not eligible to participate in the Company **401(k) Plan**. However, as described below, more lucrative retirement plans are available to independent contractors.

### Taxation

There are many income tax advantages and disadvantages in being an independent contractor as compared to an employee.

### Advantages

1. As an **individual** independent contractor, a locum tenens physician has more opportunity to claim work-related expenses than the typical employee. **All** independent contractor-related income and expenses must be reported on IRS Form 1040 Schedule C. Unlike employees, these expenses are **not** subject to the limitations of Schedule-A, itemized deductions.
2. Expenses (to the extent not paid by the staffing agency or client) are claimed on Schedule C and include **all** costs associated with the temporary work assignment such as travel, meals, housing, work tools and supplies, and continuing education. However, no deductions may be claimed for expenses attributable to personal, living, or family expenses.

3. On assignments requiring overnight lodging (away from home), meal deductions claimed may be reasonable actual out-of-pocket meal costs, the IRS standard \$46 meal and incidental per diem, or the CONUS meal and incidental rates that vary from \$51 to \$74 per day depending on the assignment location. The CONUS rates are readily available at [www.gsa.gov](http://www.gsa.gov). The housing portion of the per diem may not be claimed by an independent physician. Only actual housing costs incurred that are not reimbursed by the agency or client may be deducted.
4. On an “away-from-home” assignment, all transportation costs (home to the assignment area and daily trips from temporary housing to the work site) should be deductible to the extent not paid or reimbursed by the client or staffing agency. If the physician drives their own vehicle, 54 cents per mile for 2016 plus tolls and parking may be claimed, or one may claim actual expenses including a pro rata portion of depreciation, gas, maintenance, and insurance.
5. As an independent contractor, the physician may have a more lucrative retirement plan(s) than the typical employee 401(k) Plan. Creating an SEP, Keogh Plan, or other self-employed retirement plan before December 31 will allow the physician to contribute to the plan(s) before April 15 of the following year up to the lesser of \$53,000 or 25 percent (100 percent for some plans) of net self-employed income for the 2016 tax year. The physician might also qualify for a traditional or Roth IRA.
6. As an independent contractor, the physician may claim a deduction from adjusted gross income (without regard to itemized deductions) for 100 percent of health insurance premiums paid.
7. To the extent the physician sets aside a separate room or area in their permanent residence to conduct administrative functions of the locum tenens business, deductions (e.g., depreciation, utilities, insurance, etc.) associated with this home office may be claimed.
8. Some business liability and tax advantages may be available in forming a professional corporation for the locum tenens business including setting up a defined benefit retirement plan with even more lucrative contribution deductions.

## Disadvantages

1. A locum tenens physician (not incorporated) will be subject to federal self-employment tax reported on IRS Form 1040 Schedule SE (both the employee and employer portion of Social Security and Medicare tax). An income tax deduction may be claimed for half of this tax.
2. Federal tax law limits the deduction for actual meal costs or the meal per diem amounts to 50 percent of that claimed.
3. A locum tenens physician will generally be subject to state income taxes in the state of each work assignment to the extent the state has a personal income tax. However, a state tax credit for the nonresident state tax liability is generally available to reduce the home state tax (state of residence generally taxes all income). This credit should fully or partially eliminate any double state taxation. The states of Alaska, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming have no tax on this type of personal service income.
4. California requires all staffing agencies to withhold 7 percent of gross compensation paid to nonresident physicians working assignments in California. This withholding should substantially or fully offset the tax liability on the physician’s nonresident California income tax return.
5. In limited cases, a locums physician may have a city or county income tax reporting obligation for the tax home and/or the assignment jurisdiction, a state and/or local sales/gross tax on the gross income earned in the assignment jurisdiction, or a business or other license (beyond the medical license) requirement.



6. Filing Schedule C, quarterly estimated tax payments on Form 1040-ES, and potentially one or more state income tax returns with quarterly estimated payments increases the tax compliance burden.

### **IRS Publications to Consider**

(Available on the IRS website at [www.irs.ustreas.gov](http://www.irs.ustreas.gov))

- No. 334 Tax Guide for Small Businesses (For individuals who use Schedule C)
- No. 463 Travel, Entertainment, Gift, and Car Expenses
- No. 505 Tax Withholding and Estimated Tax
- No. 560 Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)
- No. 583 Starting a Business and Keeping Records
- No. 587 Business Use of Your Home
- No. 1542 Per Diem Rates (For travel within the Continental United States)

*The above information has been condensed from various sources generally available to the public that is subject to change, and is general in nature for which the propriety may depend on personal facts and circumstances.*

**Disclaimer:** *Tax information contained in this document is not intended to be used, and cannot be used, by any person as a basis for avoiding tax penalties that may be imposed by the IRS or any state. We recommend each taxpayer seek advice based on their circumstances from an independent tax advisor.*