

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

BRETT K. HARRIS, ESQ.
Labor Commissioner

**DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER**

April 20, 2026

Via Email and U.S. Mail

John Duerr, MFT
VP Mental Health Support Services US
Harmony Healthcare
1701 West Charleston Blvd., #300
Las Vegas, NV 89102
john.duerr@harmonyhc.com

Re: Request for Advisory Opinion—Change of Classification to Independent Contractors
for New Payment Structure and Expansion of Business

Dear Mr. Duerr,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested clarifying if individuals performing work as therapists may be classified as independent contractors and paid a flat rate instead of being classified as employees as an option for expanding your business.

As set forth in NAC 607.650, this Advisory Opinion is limited to the facts and circumstances set forth in the request. This Advisory Opinion shall not apply to any pending administrative, civil, or criminal proceeding and shall not be relied upon by any party, whether a party at issue in the facts or not, in any future proceeding unrelated to the specific and unique facts and circumstances set forth in the request.

FACTS PRESENTED

In your Request for Advisory Opinion, you pose the following question and presented the following facts:

I am reaching out to request an advisory opinion for the following employment question. Harmony Healthcare is a mental health organization that operates in Las Vegas for the past 30 years. One of our primary services that we deliver is mental health therapy. We currently use full time salaried therapists to deliver that service. Those therapists exclusively focus on delivering the service to patients that have insurance

through one of our exclusive contracts. We are looking at options for expanding our business into delivering therapy services to patients that hold commercial insurance, medicaid, medicare, tricare, and self-pay. In order to build this new business line, we would like to use independent contractors (w-9) staff instead of w-4 employees because we would be using a different compensation model for this similar but separate business line. Instead of being paid a salary rate or hourly rate, they would be paid a flat rate for each appointment that they complete. They would use their own computers and their own office space. We would provide the electronic medical software, scheduling services, and billing services. They would be able to set their own schedule, but they would need to provide us with updated availability each month so we could offer appointments to new patients through our call center.

LEGAL AUTHORITY

Employee misclassification describes a type of labor law claim wherein an employer improperly classifies a person as an Independent Contractor when the employer should have classified that person as an employee. Employers commonly misclassify employees as Independent Contractors to lessen tax liability; however, this is prohibited by Nevada law. The Nevada Office of the Labor Commissioner (“OLC”) has jurisdiction over employee misclassification in the private sector. Nevada Revised Statute (“NRS”) 608.010 states an employee “includes both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.”

Nevada law requires employers to “pay to the employee wages for each hour the employee works.” NRS 608.016. Pursuant to NRS 608.012 “wages” includes:

1. The amount which an employer agrees to pay an employee for the time the employee has worked, computed in proportion to time;
2. Commissions owed the employee; and
3. Amounts due to a discharged employee or to an employee who resigns or quits pursuant to NRS 608.040, but excludes any bonus or arrangement to share profits.

NRS 608.0155 provides a test for the OLC to use when evaluating whether an individual is properly classified as an Independent Contractor:

1. Except as otherwise provided in subsection 2, for the purposes of this chapter, a person is conclusively presumed to be an Independent Contractor if:
 - (a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;
 - (b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding in order to operate in this State; and
 - (c) The person satisfies three or more of the following criteria:
...

(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or

(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;

(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and

(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

↳ The determination of whether an investment of capital is substantial for the purpose of this subparagraph must be made on the basis of the amount of income the person receives, the equipment commonly used and the expenses commonly incurred in the trade or profession in which the person engages.

2. A natural person is conclusively presumed to be an Independent Contractor if the person is a Contractor or Subcontractor licensed pursuant to chapter 624 of NRS or is directly compensated by a Contractor or Subcontractor licensed pursuant to chapter 624 of NRS for providing labor for which a license pursuant to chapter 624 of NRS is required to perform and:

(a) The person has been and will continue to be free from control or direction over the performance of the services, both under his or her contract of service and in fact;

(b) The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; and

(c) The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

3. The fact that a person is not conclusively presumed to be an Independent Contractor for failure to satisfy three or more of the criteria set forth in paragraph (c) of subsection 1 does not automatically create a presumption that the person is an employee.

4. As used in this section:

(a) "Foreign national" has the meaning ascribed to it in NRS 294A.325.

(b) "Providing labor" does not include the delivery of supplies.

NRS 608.400 prohibits employee misclassification in Nevada. The law expressly states:

1. An employer **shall not**:

(a) Through means of coercion, misrepresentation or fraud, require a person to be classified as an Independent Contractor or form any business entity in order to classify the person as an Independent Contractor; or

(b) Willfully misclassify or otherwise willfully fail to properly classify a person as an Independent Contractor. (*Emphasis Added*).

ANALYSIS

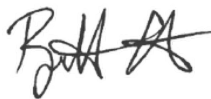
Under the facts presented classifying therapists as independent contractors would represent a misclassification pursuant to Nevada law. Most notably, your business already has full time salaried therapists that are classified as employees. When analyzing the presented facts under the rules set by NRS 608.0155, the therapists would not be Independent Contractors. The individuals would work for your business, which maintains control and direction over the work performed. The individuals would utilize your electronic medical software, scheduling services, and billing services. Second, the work performed by the therapists is not outside of the usual course and scope of business of the mental health support services offered by your business.

Finally, the therapists are not performing work in the course of an independently established trade, occupation, profession or business in which you are customarily engaged. On the contrary, you currently have individuals *employed* by you performing the same type of work and paid on a salary or an hourly basis.

Furthermore, the change in pay structure does not necessitate a change in employment status from employee to independent contractor. A flat rate or piece rate may be paid to employees performing work as therapists based on a unit of production of work. The payment must equal at least minimum wage for hours worked. To change a worker status from employee to independent contractor status for purposes of changing the pay structure would clearly demonstrate willful employee misclassification and is prohibited in Nevada.

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require that this Advisory Opinion be modified or abandoned. Should you need additional clarification, please do not hesitate to contact our office at (702) 486-2650.

Sincerely,



Brett K. Harris, Esq.
Labor Commissioner