



## 7 Featured Articles on [ihrsa.org](http://ihrsa.org) in May 2020

Uncertainty may be the mood of the moment, but club operators agree that the fitness industry has never faced a challenge as daunting as COVID-19, and never before has sound information and advice been so essential to survival and future success. That's why [ihrsa.org](http://ihrsa.org) is now their "resource of choice."

### 1. "A Small Victory: Gyms Included in Phase 1 of Reopening Plan"

—IHRSA Staff [INDUSTRY NEWS]

### 2. "18 Safety Considerations for Your Health Club Reopening Plan"

—Alexandra Black Larcom [FACILITIES]

### 3. "Fitness Industry Roundup: Suppliers Step Up"

—IHRSA Staff [INDUSTRY NEWS]

### 4. "Cleaning, Disinfecting & Sanitizing Your Gym During COVID-19"

—Rachel Valerio [FACILITIES]

### 5. "Key Operational Questions Before Reopening Your Health Club"

—IHRSA Staff [STAFFING]

### 6. "Remembering Ruth Stricker, Fitness Industry Founding Mother"

—Carolynn Jordan [INDUSTRY NEWS]

### 7. "How One Virginia Gym Owner Is Approaching Safely Reopening"

—Kaitlynn Anderson Fernandez

[STRATEGY & FINANCE] —

## Legal

# Employee? Independent Contractor?

By Norman T. Finkel

**H**ealth clubs face difficult decisions when determining whether to retain personal trainers, instructors, therapists, and other workers as employees or independent contractors.

There may be significant advantages in reduced costs and potential liability when it classifies them as independent contractors (independents). Among them: not having to withhold taxes, pay minimum or overtime wages, pay into Social Security or Medicare, or fund insurance. Independents also aren't covered by discrimination- or employee-protection laws. Clubs are generally not liable for the negligence of independents, but can be for that of employees.

These benefits, however, must be weighed against the potential dangers of misclassifying an employee as an independent.

The Internal Revenue Service (IRS), the Department of Labor (DOL), and most states have increased their focus on worker classifications via audits and lawsuits. Misclassification generates substantial losses in federal and state tax revenues, as well as losses in unemployment insurance and workers' compensation funds.

As a result, agencies are becoming far more skeptical when examining whether workers have been properly classified.

A club that improperly classifies employees as independents may be forced to pay back taxes, fines, penalties, fees, and interest.

Workers often challenge their employment status via wage claims and lawsuits, and the DOL's website encourages aggrieved workers to do so. And the IRS allows workers to file a Form SS-8 to have it determine their correct employment status.

Class actions against businesses similar to health clubs, e.g., dance studios, have resulted in multi-million-dollar verdicts and settlements. Employers can be liable for all unpaid wages, overtime and vacation pay, penalties equal to the unpaid wages, and the workers' attorney's fees.

Uber and Lyft currently face misclassification class actions that involve COVID-19. These lawsuits claim that, because both misclassify drivers as independents, they therefore owe them paid sick leave. These same types of claims could be raised against health clubs.

Proper classification is a complex legal issue, and there's no bright-line test for ascertaining status. The IRS, DOL, and many states have different tests for doing so. For example, California passed a law, effective January 1, which makes it clear that virtually all trainers, instructors, and similar workers should be deemed employees, because they provide services similar to those offered by a club.

Generally, the key factor differentiating an employee from an independent is control. The more control a club has over a worker's conduct, training, finances, and schedule, the more likely it is that they'll be considered an employee. If, for instance, the club schedules their services, collects fees, dictates the services provided, and evaluates them—the worker is probably *not* an independent. —

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