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LIMIT YOUR LIABILITY

BIZBYTE
THE DEMAND FOR FITNESS PROFESSIONALS HAS GROWN 24% IN THE LAST TEN YEARS.



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CHOOSE YOUR BUSINESS STRUCTURE CAREFULLY

BIZBYTE
IF YOU ARE AN INDEPENDENT CONTRACTOR, IT IS UP TO YOU TO PAY ALL OF YOUR SOCIAL SECURITY AND MEDICARE TAXES, WHICH, COMBINED, MAKE UP 13.3% OF YOUR EARNINGS. AS AN EMPLOYEE, YOU SPLIT THESE TAXES WITH YOUR EMPLOYER.

One of the best

protections our system offers is the limited liability company (LLC). When you open up any kind of business, you are assuming a much greater risk that an injury or other liability can be held against you personally. For example, in your field, a client can easily become injured, in which case the client (or their insurance company) can sue you personally to recover damages. Thankfully, our legal system offers the protection of limited liability, which protects your personal assets (such as your home or personal investments) so that a claimant can't enforce a judgment against those assets. In order to obtain the protection of limited liability, you will need to form an LLC, which in this day and age is easy. You can form one online, through an attorney, or use one of the many reputable companies that can form an entity for you.

Noach Burton, Esq., is a Lakewood, New Jersey-based attorney whose practice focuses on business law, real estate transactions, and commercial litigation. He has extensive experience closing a wide range of commercial real estate transactions and broad litigation experience ranging from pre-litigation planning to appellate work.

Once that process is complete, you should make sure to open a business account with your company name. Make sure that your business cards, signs, and advertisements include the company name, and that you conduct all of your business through the company. Make sure not to

pay the company bills with your personal checking account. Not only does this make your accounting easier, but it also demonstrates to the world that you are acting as a company and not as an individual. If you follow these rules, a court will generally not allow a claimant to pursue your personal assets.

In addition, especially in your business, it is crucial to obtain proper insurance coverage. Even if you have a limited liability company, if you do not carry insurance and you do not maintain sufficient capital in the company, a court would likely "pierce the corporate veil" to find you personally liable. Also, the insurance coverage will spare you the expense and complexity of defending a lawsuit and allow you instead to focus on growing your business.

Lastly, depending on the location of your business and whether you plan to service customers at your own location, you may be required by the local government to obtain a mercantile license. You should contact your local municipality or chamber of commerce to find out whether a license is necessary.

Some of the answers

to your questions depend on whether you decide to work exclusively for the gym as a freelancer or whether you start your own business and you determine the means, method, and manner in which you will provide services.

The first scenario could be trouble down the road both for you and the gym, because you would be allowing the gym to enjoy all the

benefits of an employee without assuming any of the responsibilities. This is known as worker misclassification. If you get hurt on the job, you would not be entitled to workers' compensation coverage, for example, and if they terminate your services, you would not be entitled to collect unemployment insurance benefits.

In this scenario, the gym could be liable for payroll withholding and workers' compensation

coverage, as well as unemployment benefits. The gym could face significant fines, interest, and penalties if they don't classify you correctly — because you really are an employee and not an independent contractor.

On your end, the IRS and state taxation authorities could go after you for the difference between whatever taxes you paid as an independent contractor and the amount that you should have paid through proper payroll withholding. In short, I do not recommend this scenario.

If you are contemplating the second scenario, mazel tov and *hatzlachah*. If so, make sure the business name you wish to use is available and then register it so that no one else can use it. Second, register your business with your state's division of taxation and find out if your county has a similar requirement. Third, find out if a business license is required and get a federal Employer Identification Number (even if you don't have employees now), because that's the way government entities will identify your business. You can use your social security number, but an EIN is free, and it's better to keep personal and business matters separate.

Some states have a licensing category for athletic trainer. If that applies in your case, fill out the paperwork and get licensed. With the possible exception of business registration, all of these fees are relatively small.

Janette Levey Frisch, a Central NJ employment attorney licensed in NJ and NY, has over 20 years of legal experience and is the founder of the EmpLAWyerologist Firm. Janette works with employers on most employment law issues to avoid litigation, audits, and employee relations problems.

BIZBYTE
BUSINESS LICENSES VARY BETWEEN COUNTRIES, STATES, AND LOCAL MUNICIPALITIES. OFTEN, LICENSES, REGISTRATIONS, AND CERTIFICATIONS ARE REQUIRED IN ORDER TO CONDUCT A BUSINESS IN A SINGLE LOCATION.

BIZBYTE
YOU CAN DEDUCT TAX PREPARATION FEES AS A MISCELLANEOUS DEDUCTION ON YOUR TAX RETURN.



the question
I currently work as a certified trainer at a local gym but want to go out on my own to serve clients privately. I've figured things out with consultants on the business end, but I want to know about the legal aspect. Is it important for me to set up a license for my business, or can I simply work as an independent freelancer? What are the benefits of each approach? How do I record expenses? Which business expenses are considered tax-exempt? How do I keep proper record of that? Can I take advantage of any tax benefits for small businesses?

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This is a great question

that plagues many professionals starting their own businesses. There are two types of personal trainers: those who work out of their own facilities and those of their clients, or those who work in gym facilities. The location of your operations plays a great role in the answer to your questions.

If you are on your own, then you absolutely need to be incorporated, properly licensed, and insured. As a single member LLC or S-Corp owner (each allows for income to “pass through” to an owner, however an S-Corp requires more rigid corporate formalities), your corporation is liable for every bump and bruise a client may endure from your training so you should be protected properly.

However, understand that even with the protection of an LLC or S-Corp, concerning issues such as “gross negligence,” where you personally were so reckless that someone was injured, or if you aren’t properly licensed and insured, a disgruntled client may be able to “pierce the corporate veil,” bypass your protection, and sue you personally.

Benjamin Goldburd is an associate at Goldburd McCone LLP, a boutique tax law firm in New York City. The firm’s website, www.goldburdmccone.com, offers more information on these and other tax issues.

From a legal standpoint, this is true whether you have your own facility or are performing home visits. As a stand-alone personal trainer you also can deduct the costs of your training equipment, any certifications you need, books and other subscriptions, as well as any travel/meals to conferences related to your field, and of course any rental fees associated with an actual facility. You may also be able to deduct the expense of a gym uniform if the gym where you work requires one.

Insurance policies, legal and accounting fees, office supplies, and promotional materials are similarly deductible. The travel costs between clients are also a useful deduction. Another great tip is to start a self-employed retirement savings plan. This is a tax deduction but also helps you prepare for retirement — an often overlooked aspect of being your own boss.

Be aware that to claim these expenses as tax deductions you must keep a clear record of each of them, which means receipts, statements, and a record-keeping program like QuickBooks. This can be a daunting task, so my advice is to rely heavily on technology, get a credit card made for small business that keeps a log, and sign up for a Mint account that automatically merges all your accounts. Above all else, only use business accounts for business. This will let you easily ascertain your real expenses and save you from audit nightmares.

For large facility trainers the equation changes slightly. First, you may not be entitled to most deductions as you do not own any equipment or have a multitude of expenses. Your license and insurance, books and other subscriptions are similarly deductible. You should look at your agreement with the facility to see if they are including you in their protection plans for all their employees. If so, then you only need worry about insurance for negligence, which will protect you should the facility hang you out to dry.

I would still advise that you incorporate so that you are mostly protected, obtain insurance for negligence issues, and see if there are any deductions you can take. I hope this helps, and good luck.

BIZBYTE

AROUND 45
MILLION ADULTS
HAVE A GYM
MEMBERSHIP OR
ARE MEMBERS OF A
HEALTH CLUB.

Have a dilemma for
our *parnassah* experts?
E-mail a synopsis to
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