

# **Mo Money Mo Problems Independent Contractor vs W2**

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health care

# Conflict of Interest Disclosure Statement

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Jason Trudell DBA (c), MHA, MSN, CRNA

I have the following relationships to disclose.

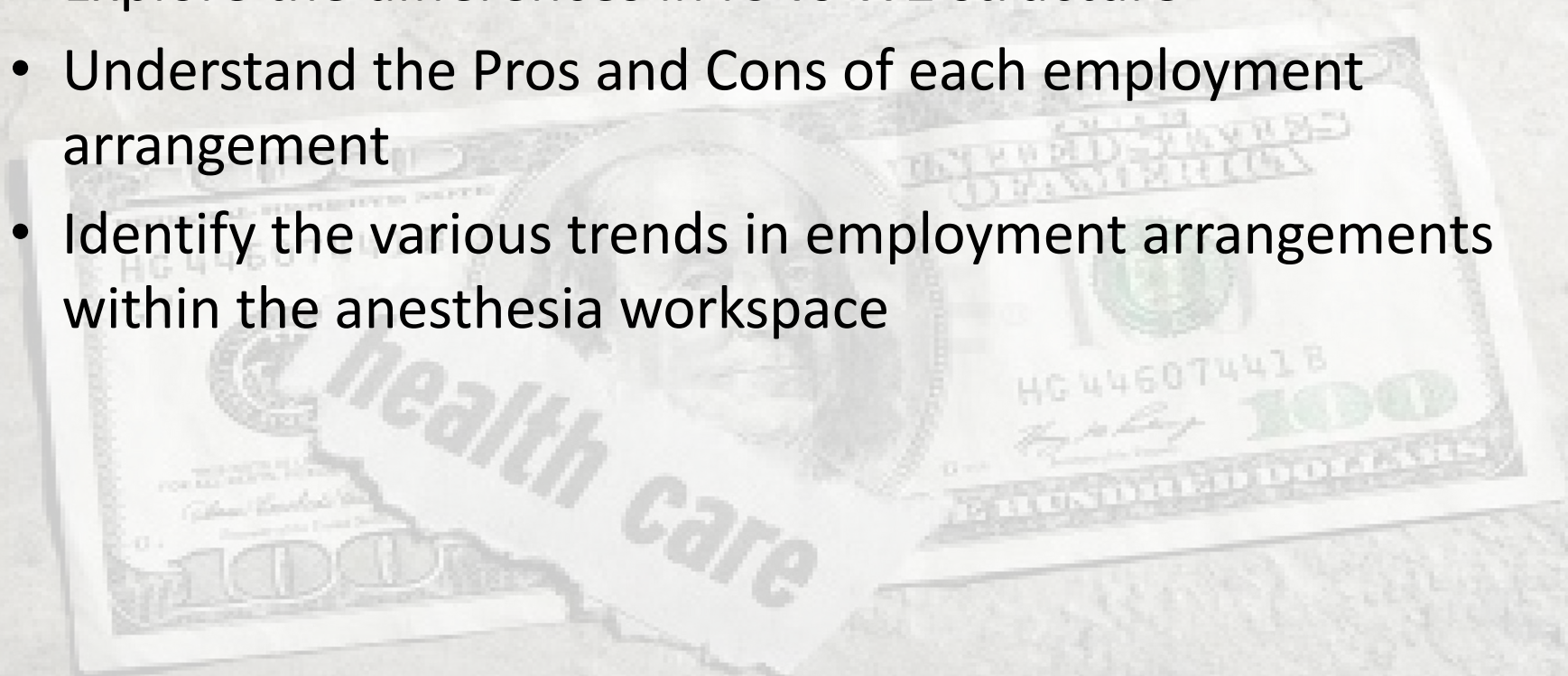
- *I am the Chief Executive Officer Executive Anesthesia, Inc.*
- *The views expressed in this presentation do not reflect official policy or position of Executive Anesthesia, Inc.*





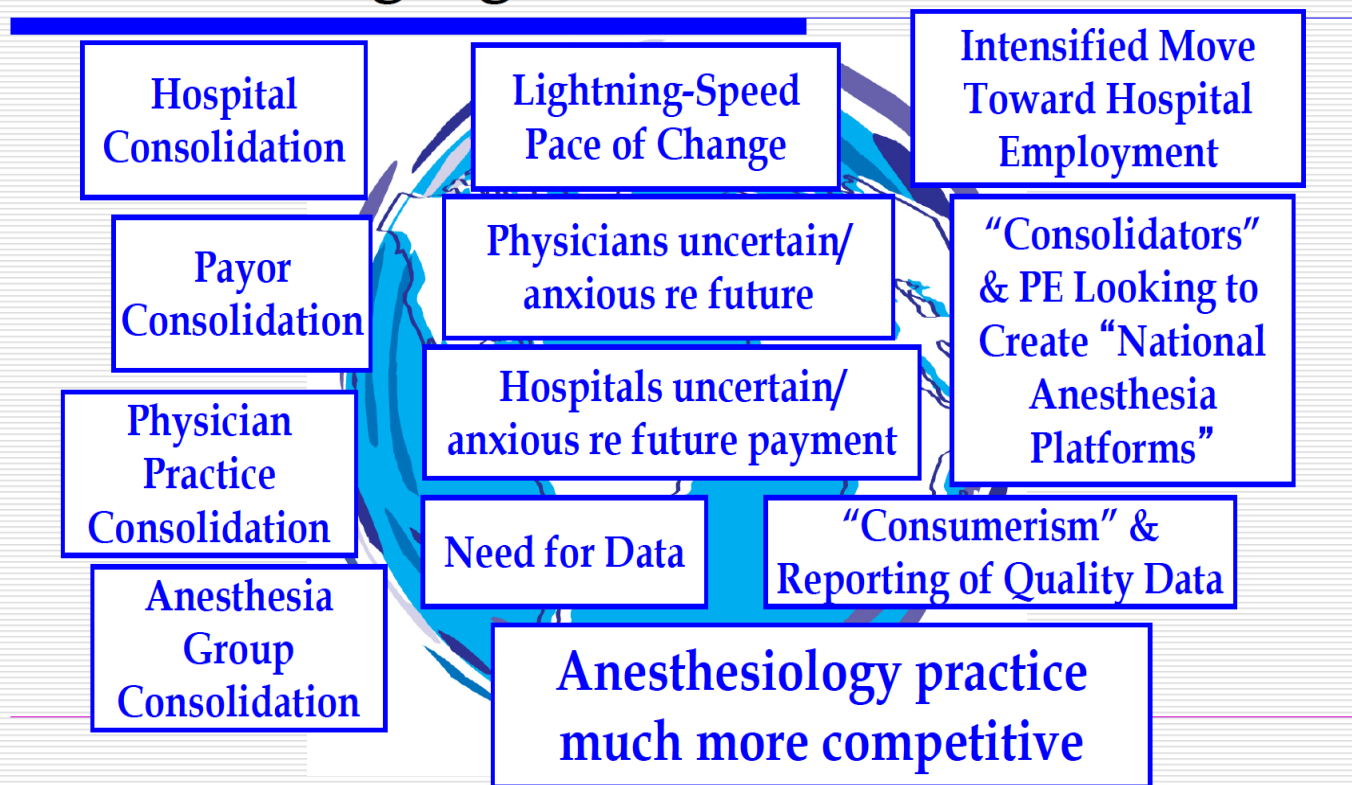
# Learner Outcomes

- Explore the differences in IC vs W2 structure
- Understand the Pros and Cons of each employment arrangement
- Identify the various trends in employment arrangements within the anesthesia workspace



# Healthcare Industry Background

## Changing Health Care Market



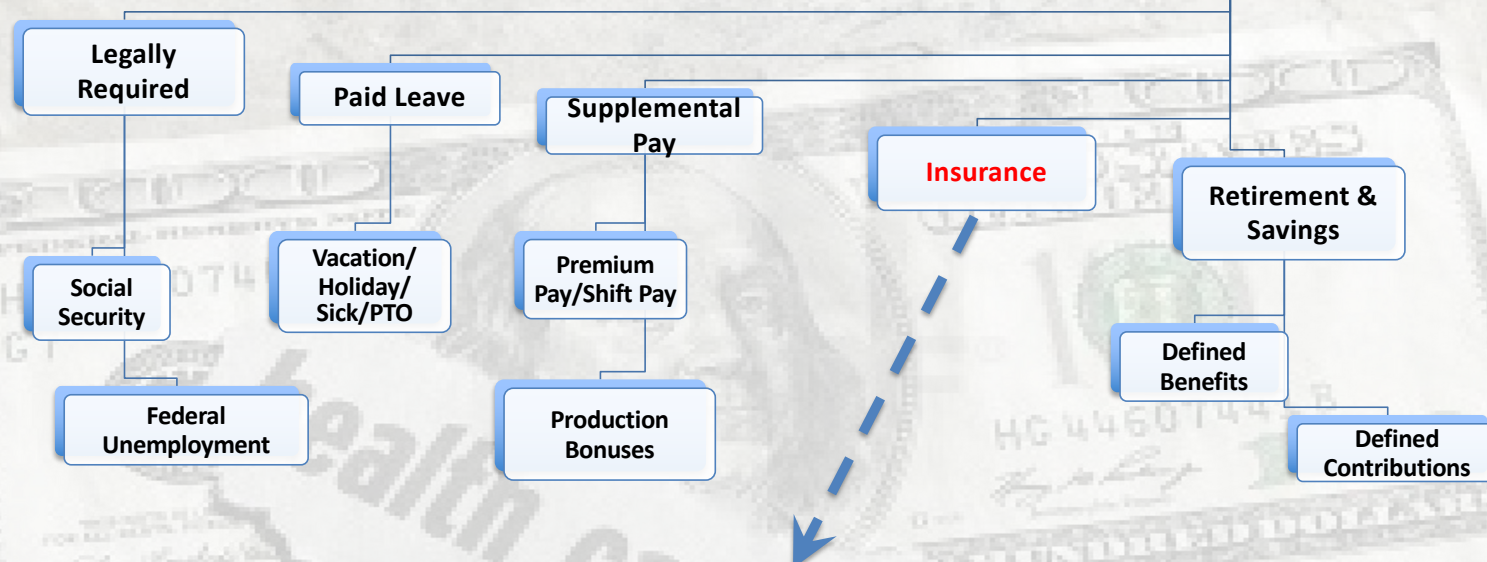


# Employee Compensation

Employee Total Compensation = Wages (or Salary)

+

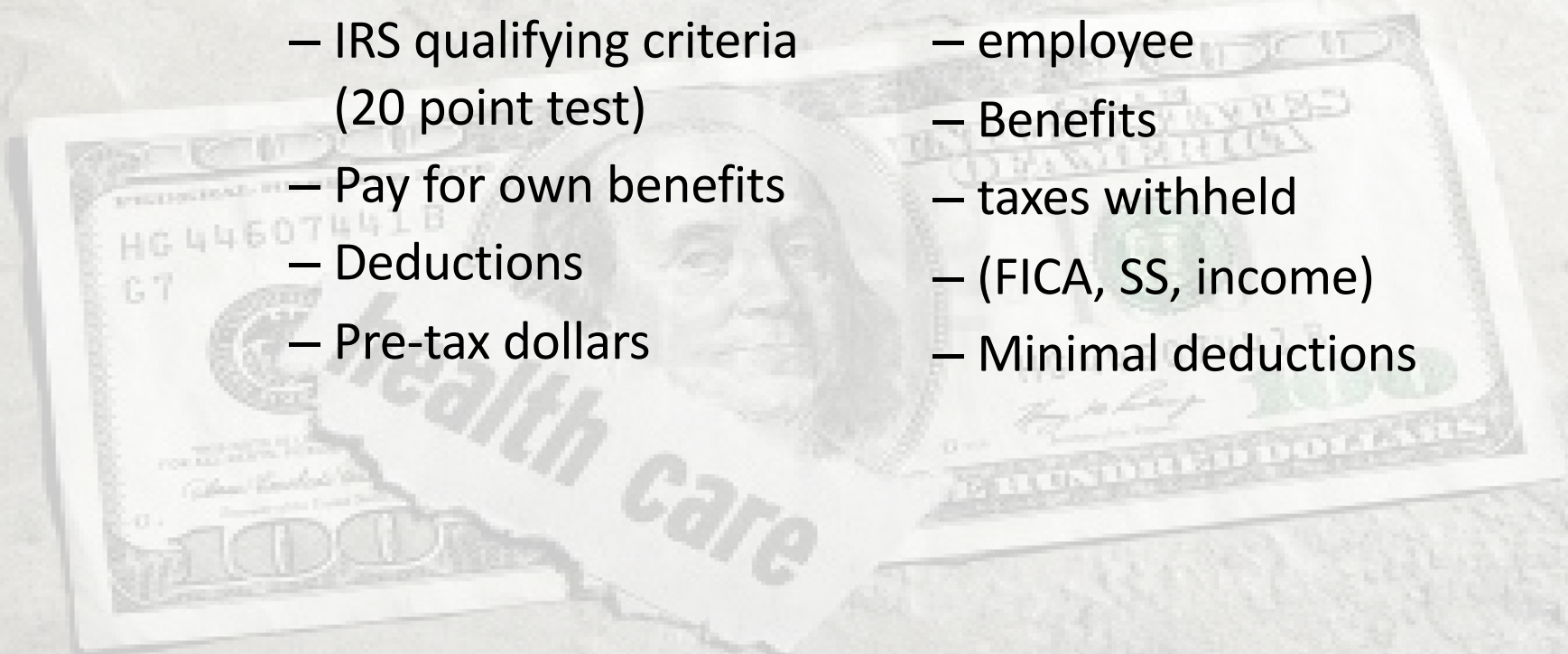
**BENEFITS**



The payment for health benefits is always viewed as if it's the employee's own money. This is regardless if contributions are made by the employer or the employee.

# Employment

- 1099
  - IRS qualifying criteria (20 point test)
  - Pay for own benefits
  - Deductions
  - Pre-tax dollars
- W-2
  - employee
  - Benefits
  - taxes withheld
  - (FICA, SS, income)
  - Minimal deductions





# Employee or IC

Courts have considered many factors in deciding whether a worker is an IC or employee

1. Behavioral Control – Facts that show whether the business has a right to direct and control. These include:
  - Instructions - an employee is generally told:
    - when, where, and how to work
    - what tools or equipment to use
    - what workers to hire or to assist with the work
    - where to purchase supplies and services
    - what work must be performed by a specified individual
    - what order or sequence to follow
  - Training – an employee may be trained to perform services in a particular manner.

# Employee or IC

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2. Financial Control – Facts that show whether the business has a right to control the business aspects of the worker's job include:
  - The extent to which the worker has unreimbursed expenses
  - The extent of the worker's investment
  - The extent to which the worker makes services available to the relevant market
  - How the business pays the worker
  - The extent to which the worker can realize a profit or loss



# Employee or IC

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## 3. Type of Relationship – Facts that show the type of relationship include:

- Written contracts describing the relationship the parties intended to create
- Whether the worker is provided with employee-type benefits
- The permanency of the relationship
- How integral the services are to the principal activity

# IRS 20 Point Factor Test

1. **Level of Instruction** – *level of direction, what, where, when, and how work product is completed*
2. **Amount of Training** – *company provided training (implies direction)*
3. **Degree of business integration** – *significance of work product on business operations*
4. **Extent of personal services** – *degree in which the company can insist on a certain person*
5. **Control of assistants** – *does the work (IC) hire, supervise, or pay helpers, if so implies an IC relationship*
6. **Continuity of relationship** – *company and a worker (long-term IC arrangement)*
7. **Flexibility of schedule**
8. **Demands for full-time work** – *full-time suggests control over a person's time*
9. **Need for on site-services** – *if the company requires work to be done on-site, suggests an employment relationship*
10. **Sequence of work** – *does the company require work product to be completed in a specific order*



## IRS 20 Point Factor Test cont.

11. **Requirements for reports** – *are written or oral reports on the status of a work product required?*
12. **Method of Payment** – *Hourly, weekly, or monthly are characteristic of employment relationships. Commission or project completion payment is suggestive of an IC*
13. **Payment of business travel expenses** – *IC typically bears the cost of travel or business expenses. Most IC set their fees high enough to cover travel. **Direct** reimbursement of travel and expenses suggests an employment relationship*
14. **Provision of tools and materials** – *workers who perform most of their work duties using company-provided equipment, tools, and material are likely to be considered employees*
15. **Investment in facilities** – *ICs typically invest and maintain their own work facilities.*
16. **Realization of profit or loss** – *workers who receive predetermined earnings and have little chance to realize significant profit or loss through their work are generally employees*
17. **Work for multiple companies** – *contractors who simultaneously provide services for several unrelated companies are likely to qualify as ICs*
18. **Availability to the public** – *if a worker regularly makes services available to the general public, then this supports an IC determination*
19. **Control over discharge** – *a company's unilateral right to discharge an employee is suggestive of employment. A company's ability to terminate an IC relationship is defined by contractual terms*
20. **Right of termination** – *employees can unilaterally terminate their work for a company without liability. An IC cannot terminate without liability, except as allowed under their contract.*

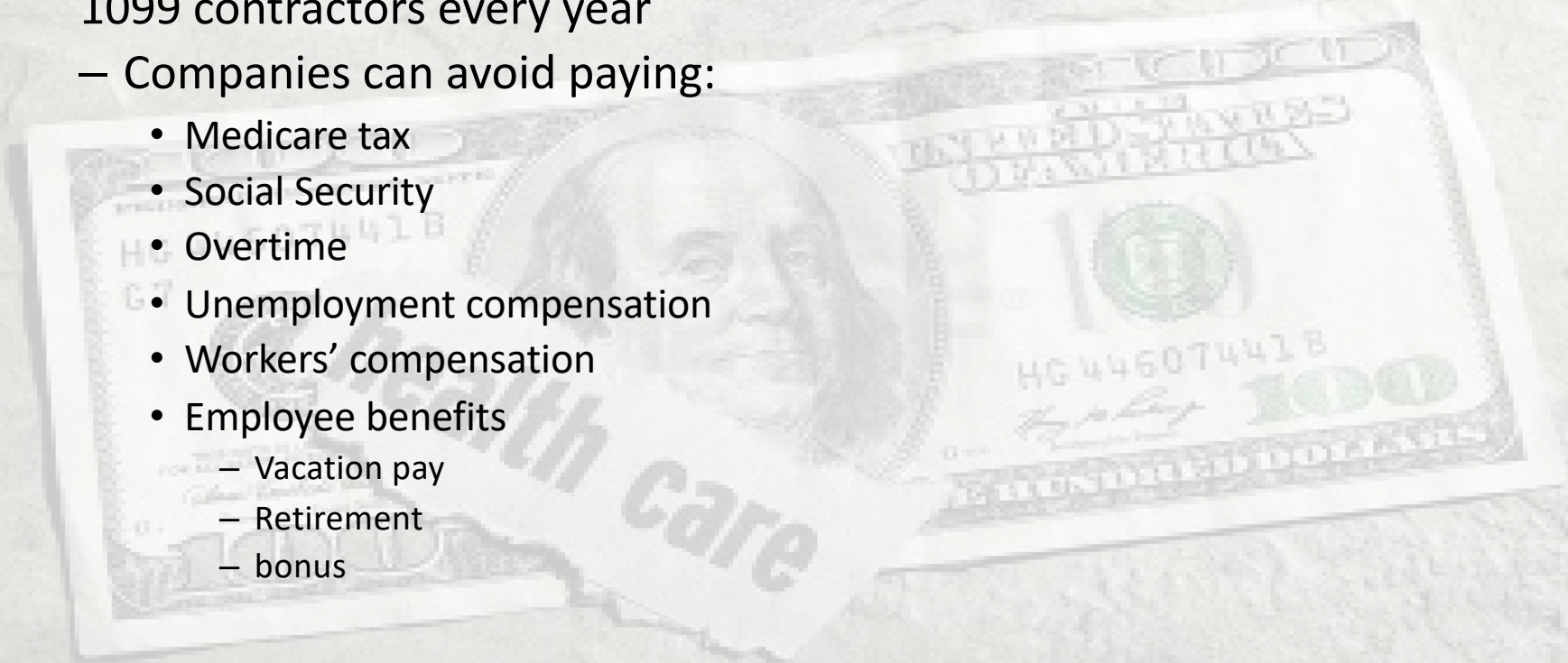


# Mis-classification of employee status

Across all industries, between 10%-30% of employees are misclassified as 1099 contractors every year

– Companies can avoid paying:

- Medicare tax
- Social Security
- Overtime
- Unemployment compensation
- Workers' compensation
- Employee benefits
  - Vacation pay
  - Retirement
  - bonus





# Penalties for misclassification of employee status

Penalties vary based on whether the IRS and Department of Labor (DOL) determine if the error was unintentional or intentional

Unintentional:

- \$50 for every W-2 the employer failed to file correctly
- 1.5% of wages
- 40% of FICA taxes that were not withheld from the employee
- 100% of the FICA taxes the employer should have paid
- 0.5% of the unpaid tax liability for each month up to 25% according to the *Failure to Pay Taxes penalty*

# Penalties for misclassification of employee status

Penalties vary based on whether the IRS and Department of Labor (DOL) determine if the error was unintentional or intentional

Intentional:

- \$50 up to **\$1000** for every W-2 the employer failed to file correctly
- 1.5% of wages
- **100%** of FICA taxes that were not withheld from the employee
- 100% of the FICA taxes the employer should have paid
- 0.5% of the unpaid tax liability for each month up to 25% according to the *Failure to Pay Taxes penalty*
- **Criminal penalties with up to one year in prison**



# Comparison Example # 1

## Comparison Factors

<b>Salary</b>	<b>Employee Portion Of Healthcare Premium</b>
\$180,000	\$125
<b>Hourly Rate</b>	<b>Hours Worked Per Day</b>
\$120	8
<b>Days Worked Per Week</b>	<b>Monthly Health Insurance Premium</b>
5	\$800
<b>Number Of Days Not Worked</b>	<b>Estimated Income Tax Deductions</b>
30	\$20,000

## Year Comparison Results

	Amount (W2)	Effect on Income (W2)	Amount (1099)	Effect on Income (1099)
<b>Gross Income</b>	\$180,000	\$180,000	\$220,800	\$220,800
<b>Health Insurance Premium</b>	\$1,500	-\$1,500	\$9,600	-\$9,600
<b>Social Security and Medicare Taxes</b>	\$10,496	-\$10,496	\$20,479	-\$20,479
<b>Self-Employed Tax Deduction</b>	\$0		\$10,240	
<b>Self-Employed Health Insurance Deduction</b>	\$0		\$9,600	
<b>Comparative Adjusted Gross Income</b>	\$180,000		\$200,960	
<b>Income Tax Deductions</b>	\$20,000		\$20,000	
<b>Comparative Taxable Income</b>	\$160,000		\$180,960	
<b>Comparative Income Tax</b>	\$37,782	-\$37,782	\$43,651	-\$43,651
<b>Comparative Leftover Income</b>		<b>\$130,222</b>		<b>\$147,070</b>

*\*Additional fees: corporate filing fee (\$600-\$1400 initial; yearly \$500-\$1200) varies by state; tax preparation (\$1500-\$2500 yearly), corporate tax rate 8.84% (CA), variable by state*

# Comparison Example # 2

## Comparison Factors

<b>Salary</b>	<b>Employee Portion Of Healthcare Premium</b>
\$200,000	\$800
<b>Hourly Rate</b>	<b>Hours Worked Per Day</b>
\$175	8
<b>Days Worked Per Week</b>	<b>Monthly Health Insurance Premium</b>
5	\$1,500
<b>Number Of Days Not Worked</b>	<b>Estimated Income Tax Deductions</b>
30	\$20,000

## Year Comparison Results

	Amount (W2)	Effect on Income (W2)	Amount (1099)	Effect on Income (1099)
<b>Gross Income</b>	\$200,000	\$200,000	\$322,000	\$322,000
<b>Health Insurance Premium</b>	\$9,600	-\$9,600	\$18,000	-\$18,000
<b>Social Security and Medicare Taxes</b>	\$10,786	-\$10,786	\$23,190	-\$23,190
<b>Self-Employed Tax Deduction</b>	\$0		\$11,595	
<b>Self-Employed Health Insurance Deduction</b>	\$0		\$18,000	
<b>Comparative Adjusted Gross Income</b>	\$200,000		\$292,405	
<b>Income Tax Deductions</b>	\$20,000		\$20,000	
<b>Comparative Taxable Income</b>	\$180,000		\$272,405	
<b>Comparative Income Tax</b>	\$43,382	-\$43,382	\$73,293	-\$73,293
<b>Comparative Leftover Income</b>		<b>\$136,232</b>		<b>\$207,517</b>

*\*Additional fees: corporate filing fee (\$600-\$1400 initial; yearly \$500-\$1200) varies by state; tax preparation (\$1500-\$2500 yearly), corporate tax rate 8.84% (CA), variable by state*



# Gig employment limitations

- AB 5 (California)
  - Codified a 3 part test (ABC test) to determine if a person qualifies as an IC
  - All three conditions must be met
    - The person is free from control and direction of the hiring entity in connection with the person's work, in contract, and in fact
    - The person performs work outside of the scope of the hiring entity's business
    - The person is customarily engaged in an independently established trade, occupation, or business of the same nature
- AB 2257 amendment (California)
  - Expanded the reach of the B2B exemption
    - A business service provider that provides services directly to the customers of the other contracting business can still utilize the B2B exemption
    - Previously the business services must have been provided directly to the contracting business (hospital/ASC) and not the contracting business' customers (patients)

# Advantages/Disadvantages

## Employed (W2)

- local, federal, and state legislative worker protections
  - Minimum wage laws
  - Required sick leave
  - OT restrictions
- Social benefits
  - Nearly all employers are required to offer health care to employees
    - 60 employees significant reduction in healthcare premiums
  - Employee retirement funds above compensation (match)
- Optional benefits
  - Student loan repayment (employer-sponsored, federal/ state-sponsored)
  - Wellness programs (EAP)
  - Financial planning assistance
- Taxes automatically withheld



# Advantages/Disadvantages

## Independent Contractor (1099)

- Greater flexibility
  - Multiple options for employment engagements
- No ceiling on earnings
- More active role in benefits planning
  - Typically greater ability to fund retirement
  - No tax withholding (monthly or quarterly tax payments)
  - Health insurance and out of pocket are overall greater
- Disconnected from the client company
- Proactive planning on the next assignment
- No work = No Pay
- Corporation entity management
- IRS Audits

# Employment Trends

- Nationwide migration from W2 – 1099 employment engagements
  - 30%+ of CRNA are engaged in 1099 employment arrangements
    - Increased from 10-15% pre-Covid
  - Increase in CRNA locum engagements parallels the increase in RN traveler numbers
  - Covid shifted the value proposition for clinicians



# Employment Trends

- Pre-covid reduction in benefits for W2 employers
  - E.g. high deductible premiums for health insurance
  - Reduction in matching for retirement, e.g., 3%
  - Poor culture of employment and disconnect in work-life balance
  - “Corporatization of medicine”
- Post-Covid era
  - Priority of work-life balance
  - Generational migration of workforce numbers

# Employment Trends

- Post-Covid era
  - Priority of work-life balance
  - Generational migration of healthcare workforce (loyalty)
    - Clinicians furloughed
    - Reduction in compensation by W2 entities
    - Non-payment by W2 entities
  - 17% reduction in the total clinician workforce
    - Created an inverse relationship on the supply/demand curve
  - Private practice management group's solvency



# Questions

