

THE PROVISION OF PERSONAL TRAINING SERVICES: CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR SOLE PROPRIETORSHIP?

Thousands of personal trainers in this country are providing personal training services to numerous clients through a number of business forms. Many deliver services in their own name or through some trade name as sole proprietors and report their income on their individual income tax returns. Others deliver services through so-called limited liability companies (LLCs), while still others serve their clients in corporate capacities. Those who practice personal training with others in related ownership positions also sometimes deliver services in partnership capacities which are much like the sole proprietorship form of service delivery but with more than one owner.

Personal trainers who deliver service directly do so without the protective shield against personal liability which corporations and limited liability companies provide to their owners in the delivery of service to clients. In either of these situations, certain protections against tort and other forms of liability can be provided through such entities.

Corporations and limited liability companies as well as sole proprietorships and partnerships are responsible for the acts and omissions of their agents under a concept in law referred to as respondeat superior, which literally means that the master is responsible for the acts of his or her servants. However, stockholders who own corporations and members (owners) of limited liability companies which provide services are not personally liable for the acts or omissions of their agents or employees. In addition, the liability of corporations and limited liability companies is limited to the assets of the entities and instances of negligence do not expose the personal assets of shareholders or limited liability company members to loss absent intentional, willful or criminal activities.

If the sole proprietorship or partnership mode of service delivery is chosen by one or more personal trainers then the individual owner or owners as partners will be responsible personally for all aspects of service delivery. In instances where negligence is found to exist, such persons will be individually liable for all services provided directly or by his or her employees to clients. These liabilities include potential personal liability for 1) all hiring and firing decisions; 2) negligent acts or omissions in service delivery; and, 3) income tax, social security, workers compensation, pension payments, unemployment compensation deposits and related federal and state withholdings.

In the corporation mode, personal trainers who own the corporation as shareholders have only their investment in the corporation exposed to liability related to service delivery or other potential liability exposures such as contracts where they have not signed those contracts personally. However, if those shareholders also act as directors of the corporation or in officer capacities, they may potentially have personal liability for federal or state tax and other withholdings and for obligations where they sign personally for certain matters. The provision of service in the limited

liability company mode provides the most protection for individuals choosing to provide service through this vehicle.

The delivery of personal training services in a sole proprietorship or through a partnership form is the least costly business model to establish and to use to deliver service to clients. Corporations and limited liability companies are the most expensive in terms of cost and fees to establish and operate. Corporations and limited liability companies must have a written framework within which services are provided and corporations must have regular boards of directors meetings and yearly meetings of shareholders.

Despite the foregoing, corporations and limited liability companies provide a legal entity separate and apart from its owners. While it is possible within the corporate structure for other parties to “pierce the corporate veil” and attempt to hold individual shareholders or others liable because of the lack of formal operation of those entities, such events are rare. Even with the expenses associated with the creation and operation of corporate or limited liability companies, the delivery of service through these entities will provide the most protection for personal trainer owners delivering services to clients. Personal trainers should seek individual legal advice on the business entity they should use to provide service to clients.

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