

Worker's Compensation

For the employee fitness trainer, potential work-related injuries will be covered under the employee club's worker's compensation policy. But what of the independent contractor trainer who is injured on the job? Normally, the independent contractor will not be covered under the other party's policy. It is advisable for the freelancing trainer to explore questions of worker's compensation and how to obtain coverage before taking on an independent contracting job. In fact, many clubs may require that trainers provide proof of the requisite insurance coverage, including worker's compensation, liability insurance and health insurance before the job can begin. ♦

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This article and sample agreement are excerpted from *Legal Aspects of Personal Fitness Training*, reprinted with permission from Professional Reports Corporation.

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Sample Employment Agreement

No form or procedure should ever be adopted or utilized by a personal fitness trainer for personal fitness training activities without individualized legal and professional assistance. The law varies from state to state and develops over time; it is dependent upon matters of fact and judgement. As a consequence, legal and other professional advice is absolutely necessary for the development and use of any form or document. The following form is illustrative only.

This Agreement ("Agreement") is made this day of _____, 1992, between _____ ("Employer") and _____ ("Independent Contractor").

RECITALS

The purpose of this Agreement is to state the terms and conditions under which the Employer/Independent Contractor relationship is created herein and to protect Employer's time and energy expended over the past years in developing its personal fitness training/consulting business, programs and clientele.

The fitness programs, business forms, subscribing client list and any other related documents are considered trade secrets developed by Employer.

Employer is in the business of providing exercise and nutritional counseling, and sales of fitness equipment, products and services.

Employer desires to have the above services performed by an Independent Contractor.

Independent Contractor agrees to perform those services for Employer under the terms and conditions set forth in this Agreement.

Employer agrees to provide Independent Contractor with valuable training, experience and knowledge in order to perform Independent Contractor's services hereunder.

THEREFORE, in consideration of the mutual promises and covenants set forth herein, Employer and Independent Contractor agree as follows:

1. NATURE OF WORK

Independent Contractor shall be employed as a PERSONAL FITNESS TRAINER. Independent Contractor shall perform services including, but not limited to, the following:

- a. Instructing Employer's clients in safe, effective and proper exercise programs;
- b. Providing safe, effective and proper nutritional counseling to Employer's clients;
- c. Promoting Employer's products and services at all times while in the employment of the employer; and
- d. Furthering and promoting Employer's business, fitness philosophy and policies, and procedures.

2. COMPENSATION

As a Personal Fitness Trainer, Employer shall pay as compensation to Independent Contractor for services rendered hereunder, \$_____ per client consultation session. In addition, Employer shall pay to Independent Contractor, _____ percent (_____%) of the fee for any of Employer's products sold or additional services provided.

3. STATUS OF INDEPENDENT CONTRACTOR

The parties intend that an Employer/Independent Contractor relationship be created by this Agreement. Employer is only interested in the results to be achieved, and the conduct and control of the work will lie solely with the Independent Contractor. Independent Contractor is not to be considered an agent or employee of Employer for any purpose. It is understood that Employer does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to engage in the performance of his or her own personal client consultation pursuant to the terms and conditions of this Agreement. Independent Contractor agrees and covenants that in the performance of training, counseling or advising personal clients, Independent Contractor shall not:

- a. Train any personal client simultaneously with any of Employer's clients;
- b. Wear Employer's uniform while training a personal client;
- c. Use any of Employer's forms, charts, business cards, stationery or any other related documents pertaining to Employer's business;
- d. Represent to a personal client or act in any manner that tends to represent to the personal client that the client is being trained under the guidelines, principles or formulas of Employer;
- e. Engage in the unauthorized sale of

For Independent Contractors

any services, goods, or products on behalf of Employer. Independent Contractor agrees not to sell, offer to sell, or distribute, with or without compensation, any services, goods or products of Employer except with the express approval of Employer.

4. SOLICITING CLIENTS AND TERMINATION OF EMPLOYMENT

Upon termination of this Agreement, Independent Contractor shall immediately cease training any and all of Employer's clients. Independent Contractor shall not for a period of one (1) year immediately following the termination of employment with Employer, either directly or indirectly:

- a. Make known to any person, firm or corporation the names and addresses of any of the clients of the Employer or any other information pertaining to them; and/or
- b. Call on, solicit or take away, or attempt to call on, solicit or take away any client of the Employer, past, present or future, whom the Independent Contractor knows of or has become acquainted with during the Independent Contractor's employment with the Employer, either for the Independent Contractor or for any other person or corporation; and/or
- c. Call on, solicit or take away, or attempt to call on, solicit or take away, potential clients of the Employer.

5. COMPETING WITH EMPLOYER

Independent Contractor shall not both during Employment with Employer and for a period of one (1) year immediately following the termination of employment with Employer, attempt in any manner either directly or indirectly to compete, or attempt to compete, with Employer in the personal fitness/consultation business in Employer's territories.

6. RETURN OF EMPLOYER'S PROPERTY

On the termination of Independent Contractor's employment or whenever requested by Employer, Independent Contractor shall immediately deliver to Employer all property in Independent Contractor's possession or control belonging to Employer.

7. OWNERSHIP OF RECORDS, FORMS AND DOCUMENTS

Any and all records, books, forms, accounts, programs and other documents relating in

any manner whatsoever to the clients (past, present, future or potential) and/or business of Employer, whether purchased, prepared or developed by Independent Contractor or otherwise coming into Independent Contractor's possession, shall be the sole and exclusive property of Employer regardless of who actually prepared, developed or purchased the records, books, forms, accounts, programs or other documents. All such documents shall be immediately returned to Employer by Independent Contractor on any termination of Independent Contractor's employment or whenever requested by Employer. If Independent Contractor purchases any such original books or documents, he/she shall immediately notify Employer, who then shall immediately reimburse him/her.

8. REFERRALS

Independent Contractor understands that any referrals from clients of Employer are the sole property and business of the Employer. Independent Contractor shall not solicit for himself or herself, or on the behalf of any other person, corporation, partnership or business, referrals from Employer's clients during employment with Employer and for a period of one (1) year immediately following termination of employment with Employer.

9. RECRUITING EMPLOYEES AFTER TERMINATION OF EMPLOYMENT

Independent Contractor shall not for a period of one (1) year immediately following the termination of employment with Employer attempt in any manner either directly or indirectly to recruit, or attempt to recruit, any of the officers or employees, present or future, of Employer.

10. LIABILITY AND INDEMNIFICATION

The work to be performed under this Agreement will be performed entirely at Independent Contractor's risk and Independent Contractor agrees to provide his own professional liability insurance. Independent Contractor agrees to indemnify Employer for any and all liability or loss arising in any way out of the performance of the services of Independent Contractor under this Agreement.

11. LIABILITY FOR TAXES

Independent Contractor agrees that all state and federal withholding taxes, social

security taxes, unemployment insurance contributions and assessments, worker's compensation insurance, general excise and sales taxes, self-employment taxes, and any and all other taxes, fees, assessments or contributions covering Independent Contractor, if any, shall be the sole responsibility of Independent Contractor.

12. DURATION

Either party may cancel this Agreement upon fifteen (15) days' notice to the other.

13. MINIMUM COMMITMENT

Independent Contractor agrees to make himself or herself available to Employer to train a minimum of five (5) clients per week. Employer is not obligated to provide Independent Contractor with the minimum commitment stated above, but will make a good faith attempt to provide Independent Contractor with as many clients as Independent Contractor desires.

14. REMEDIES

Independent Contractor agrees that in the event of breach of any provision of this Agreement, Independent Contractor shall be liable to Employer for any and all expenses, costs and reasonable attorneys' fees incurred to enforce Employer's rights under this Agreement plus the amount of loss, both direct and consequential, to Employer arising from or related to such breach.

15. SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

16. ADDITIONAL PROVISIONS

Independent Contractor shall maintain the following:

- a. Current membership in IDEA, The Association for Fitness Professionals;
- b. Current CPR certification;
- c. His/her own professional liability insurance and health insurance.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above first written.

By _____
Its Authorized Representative "Employer"

Independent Contractor



Cincinnati Sports Mall

Training Confidentiality & Non-Compete Agreement

Dear _____:

As an individual wishing to train clients at the Cincinnati Sports Mall, Inc., (the "Sports Mall"), as a condition of the Sports Mall agreeing to let you train clients at the Sports Mall, you agree to the following:

Confidentiality

You will be exposed to sensitive and confidential information of the Sports Mall; e.g. customer lists, marketing plans, marketing materials and budgets. All information shared with, provided to, discussed with or learned or created by you in connection with this agreement will be property of the Sports Mall. You agree that you will not disclose any such information either during or after the term of your relationship with the Sports Mall. You understand and agree that the Sports Mall owns this information and the Sports Mall exercises and retains its exclusive proprietary interest over its customers and related information.

Non-competition

During your relationship with the Sports Mall, and for one year after the termination of your relationship with the Sports Mall, you will not directly or indirectly, as an employee, owner, shareholder, partner, officer, director, member, consultant, independent contractor or otherwise, provide service or facilities similar to those provided or offered by the Sports Mall within an eight (8) mile radius of the Sports Mall. You further agree that you will not provide services to customers of the Sports Mall for one year after the termination of your relationship with the Sports Mall.

Employee meetings are scheduled periodically throughout the year are a requirement for employees to attend. Meetings are intended to be very informative, discussing various topics pertaining to your job and to the policies and procedures within the club.

If you are scheduled to be at training session or an employee meeting, your presence is mandatory. Check with the department supervisor or the coordinator of the session about being paid for the hours spent in-house training.

RESIGNATION FROM EMPLOYMENT

Professional and managerial employees are expected to give four weeks notice of their resignation. All other employees are expected to give two weeks notice.

Resignations must be given, in writing, to the supervisor of the department and contain the date of notice, the last day to be worked, and reason for leaving. The employee and the manager must sign this notice.

If an employee has given proper notice, the requirement to the department supervisor with the agreement of the General Manager may waive work during the notice period, if it is in the best interest of Four Flags.

All departing employees must turn in their Four Flags membership cards, keys, and any other Four Flags property in their possession. Final paychecks will be held in the General Manager's office until all property has been returned.

Upon resignation or departure from employment at Four Flags, any and all perks are terminated. There are special considerations made for former employees and his/her family members who wish to continue their membership, of which there will be no initiation fee charges to continue the membership at Four Flags and employees will be charged a monthly due. All inquires regarding past perks should be directed to the General Manager.

CONFIDENTIALITY OF INFORMATION

It is the policy of Four Flags to prohibit employees from releasing financial, personal, or other information about Four Flags, its' members, members' family and Four Flags employees except when such release has been properly authorized by management. The release of all confidential information must be handled in accordance with Four Flags policies.

Employees who release confidential information without prior authorization or approval, or those who engage in other actions prohibited in by this policy are subject to disciplinary action, up to and including immediate discharge and legal prosecution.

OTHER EMPLOYMENT

Employees of Four Flags may also be employed elsewhere, as long as the other employment or schooling does not create a conflict of interest, interfere, or detract from the performance of duties and responsibilities of the Four Flags position. When another job or educational opportunity affects an employee's service to Four Flags, restrictions may be imposed or termination of Four Flags employment may result.

SOLICITATION

Employees may not solicit or distribute literature or products that are of direct conflict with Four Flags and its facilities during the time that they are to be working, or at any other time the employee is on the premise.

EMERGENCY ACTION PLAN

If someone in the club may require Emergency Medical Services, these important steps are to be followed.

1. When you get notice of an emergency situation in the club;
 - a. Send someone, preferably staff trained in CPR, to the site to:
 - i. **CHECK** the scene and victim's conditions.
 - ii. Decide if it is necessary to **CALL 911**
 - iii. **CARE** for the victim until advanced medical help arrives.
2. If decided that Emergency Medical Services are necessary call 911 and tell them;
 - a. We need help at: Four Flags Health & Racquet Club at 6125 Gratiot Road behind Café Suz
 - b. If known tell them: what happened, the victim's condition, and what care is being given.
 - c. Send someone, preferably staff, to wait at the front entrance for the Emergency Medical Services to arrive.
 - d. Once Emergency Medical Services arrive, direct them to the site.
3. Fill out an injury report as soon as possible after any accident. They are located in the file cabinet behind the front desk.