

Date: July 2, 2013

Advisory North America Region: Nutrition Club Operators who Provide Training to Others

One of the benefits of being an Herbalife Independent Distributor is the encouragement, support and training made available, not only by Herbalife, but also by other more experienced Distributors.

The purpose of this Advisory is to alert Distributors who provide a training – especially in Nutrition Clubs -- to recent developments in the law.

Herbalife Distributors are independent contractors and are not employees of Herbalife or any other Distributor, including their upline. This is because each Distributor decides for himself whether and how he wants to engage in an Herbalife business. Distributors' only limitations are applicable law and Herbalife's rules which are designed to guide Distributors as to ethical business practices that are protective of consumers, Distributors and Herbalife.

Earlier this month, a United States federal court issued a ruling which provides some guidance on the features of a training program that might result in the trainer being regarded as the "employer" of a person receiving training. If that occurs, the "employer" will be required to pay minimum wage and overtime to the employee, provide workers' compensation and workers' unemployment insurance, etc.

First, the standards adopted by the court (as we believe they might be applied to training in a Nutrition Club) – all six of which have to be met or the trainee will be regarded as the "employee" of the trainer:

1. The training, even though it includes training as to the operation of a Nutrition Club, is similar to training which would be given in an educational environment. An example: create tools like scorecards or rating sheets to grade your trainees during training.
2. The training experience is for the exclusive benefit of the trainee. For example: If a trainee brings a new customer to the Club they should receive a portion of the membership fee (the fee less an estimate of the Club's costs to provide services to the member) and continue to work with the customer. If that customer decides down the road to become a Distributor, the Nutrition Club operator refers him/her to the person who invited them.
3. The trainee does not displace regular employees and works under the close supervision of the trainer. An example: The Trainee is never in the club by himself/herself.
4. The Nutrition Club operator derives no immediate advantage from the activities of the trainee; and on occasion its operations may actually be impaired. For example: The trainee is training for a limited time doing an activity for the purpose of learning how to be proficient in that activity. For example, making shakes. The trainee spends no more than 2 hours in total learning how to make shakes using different flavors of Formula 1.
5. The trainee understands that no employment is promised after the completion of the training.
6. The trainee and the trainer understand that the trainee is not entitled to wages for the time spent in training.

Second, here are some suggestions on "do's" and "don'ts" which should be helpful in avoiding "employee" status of trainees in Nutrition Clubs. Please note, however, that each Distributor is responsible for their own actions and that Herbalife is not in a position to provide legal or tax advice to our Distributors.

A. The Do's

1. Create programs that give the trainee the knowledge and skills needed to run a successful business, not just a Nutritional Club or Herbalife Distributorship. This can be accomplished in a classroom setting where the trainee is given written materials and instruction on what every Club operator or

Distributor needs to know in order to succeed in this or a similar business.

2. Limit the time a trainee spends on specific activities in the Nutrition Club. The less time that a trainee spends on specific activities in the Nutrition Club in a day, or during the week, the better. If you can develop a program where the trainee spends no more than two hours in total on specific activities in the Nutrition Club in a given day, do so.
 3. Set a maximum time period as to how long it will take a trainee to complete the program that you design.
 4. Make sure you remind the trainee that during the time period he is in your program, he is an Herbalife Distributor and as such, there is no requirement to sell Herbalife products or to open their own Nutrition Club. Inform the trainee that the program is one you have created and that it is not a program that Herbalife offers to Distributors.
 5. Encourage the trainee to sell products outside of your Club at any time while they are enrolled in your trainee program.
 6. Allow trainees to observe you make shakes, tea and aloe for Club members and allow them to make a few shakes for Club members but only as a training exercise under your direct in-person supervision. Respond to any questions the trainee may have about all aspects of the day to day operation of the Club.
- B. The Don'ts
1. Do not make it a requirement that any Herbalife Distributor complete a traineeship program in order to bring members to your Club, or to visit your Club.
 2. Do not permit a trainee to perform any physical tasks in your Club – except for their own Club members or, and on a very limited basis as a training exercise under your direct in-person supervision. If you devise a program which allows a trainee to bring in a new member to your Club, the benefits of that Club member should belong to the trainee.
 3. Although the trainee needs to understand the necessity of maintaining a Nutrition Club with the highest sanitary standards, do not permit the trainee to clean or assist in cleaning the Club's premises, or any of the equipment (blenders, utensils) used to make shakes, except to clean up after the trainee's own Club members.
 4. Do not leave the trainee alone or in charge of your Club for any reason or at any time, even if an experienced Distributor is present with the trainee in your absence. Schedule a trainee to be in the Club only when you are there. If an appointment or even a sudden emergency requires you to leave the Club, ask the trainee to come back at a mutually convenient time.
 5. Do not provide compensation to a trainee. If you do so, you will also have to remit payroll taxes and obtain workers' compensation insurance coverage should you compensate trainees.

All the Do's and Don'ts of this Advisory apply to trainees attending the club. If you "pick and choose" from the do's and don'ts you wish to follow, you increase the likelihood that the trainee will be considered to be an employee.

Herbalife provides guidelines from time to time that may help in building your business as an Independent Distributor. Your success is based on combining tools and methods that you may learn and teach others to develop the necessary skills as your career in Herbalife grows.

Herbalife thanks you for incorporating best practices in your daily operation. Should you have any questions regarding this communication please contact Distributor Relations at 866-866-4744.

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