



On Assignment

The Contingent Workforce: Minimize risk by working with a staffing agency

A White Paper by On Assignment

I – Introduction

Security breaches by improperly vetted consultants ... novices masquerading as skilled professionals ... discrimination lawsuits ... worker misclassification penalties and fines ... The list goes on. Employment is risky business, and the consequences of hiring missteps are serious.

With an astonishing 54 million American workers now freelancing full- or part-time according to a 2015 survey¹, companies doing the hiring are scrambling to find the proven, trustworthy talent they need in order to thrive. What's more, the thicket of complex labor and tax laws puts organizations that use independent consultants at risk of misclassifying workers and incurring steep fines.

Staffing agencies offer employers a cost-effective and dependable way to use contingent workers. And with the workforce predicted to be 50 percent freelance by 2020², now's the time to understand the benefits of contingent labor, the considerable risks in hiring independent consultants directly, and the advantages of using a professional staffing agency to mitigate those risks.

II – Benefits of Using Contingent Labor

An independent contractor—also referred to as a freelancer, contractor, consultant, 1099er, temp, and contingent labor—is a worker hired by an organization either for a specified time period or for the duration of a project. Independent consultants are responsible for their own employment tax payments, health insurance and benefit arrangements, and professional

¹ "Freelancing in America". September, 2015. Conducted by the independent research firm Edelman Berland and commissioned by Freelancers Union and Upwork.

² "Millennials at Work. Reshaping the Workplace." 2011. PwC.

liability insurance. A business may terminate a consultant's employment immediately and without cause.

An employee is a worker an organization hires for wages or a salary. The employer is responsible for employment taxes, health insurance plus other benefits payments, and liability insurance. The termination of an employee's contract is subject to state and federal legislation regarding notice of termination, severance pay arrangements, and COBRA payments.

By using contingent labor, employers can enjoy significant benefits such as:

- A. Improved Productivity.** An organization improves the productivity of their workforce when they engage the right consultant for just the right amount of time versus using an internal employee who happens to be on hand and available.
- B. Financial Flexibility.** Organizations have more financial flexibility when they shift the fixed costs of permanent employees to the variable costs of contingent labor.
- C. Access to Better Talent.** As technologies advance rapidly, workers with the skills employers need become harder to find, and organizations turn to consultants to fill the skills gap.
- D. Exemptions from Certain Taxes and Labor Laws.** Employers engaging contingent workers are not required to pay certain employment-related taxes or offer benefits, and are exempt from many labor and immigration laws they must comply with when hiring employees.

To take advantage of all the benefits of contingent labor, employers have two choices: to source, recruit, and hire independent consultants directly through their own networks or online, or to use a professional staffing agency.

III – The Risks of Engaging an Independent Consultant Directly

By going it alone and hiring an independent consultant directly, employers open the door to significant and growing risks such as worker misclassification, security, and worker quality.

- A. Worker Misclassification.** Employers must adhere to all state and federal legislation regarding wages, taxation, immigration, and employment. When engaging independent consultants directly, employers may unknowingly and incorrectly classify them as such

when they are operating as employees. If an employee is found to be misclassified as a consultant, employers are liable for unpaid wages as well as employment and disability insurance taxes. Legal action and fines may also ensue.

Oftentimes, “the overwhelming number of businesses that misclassify employees as independent contractors have simply paid insufficient attention to the legal requirements or do not understand the laws in this area, either because they have mistaken conceptions of the laws or because they are confused by the array of different laws at the federal and state levels.”³

- B. Compromised Security.** Even as the world’s dangers mount and workplaces grow more vulnerable, employers often do not thoroughly verify independent consultants’ references or conduct background checks, nor are they required to confirm citizenship. Without ensuring these safeguards are in place, the employer increases security risks when engaging consultants directly.

- C. Inferior Worker Quality.** The advance of technology has led to a shortage of skilled workers. In an effort to fill the skills gap, employers often turn first to job boards, social networks, and online employment sites. Online especially, potential employees may misrepresent themselves, underbidding talented professionals and delivering shoddy work. Hiring managers often can’t prescreen extensively enough to verify that every independent consultant actually possesses all of the skills he or she claims to. When a hire doesn’t work out, time and money are wasted. What’s more, project deadlines, product quality, customer service, and even business relationships may be seriously compromised.

These risks are real and rising. With the economy’s increased reliance on independent consultants, comes intense focus on employment regulations by government and labor activists alike. Legal action—and the press that comes along with it—is also on the rise. In California, for example, Uber drivers made big news by filing a class-action lawsuit seeking employee status. In a similar misclassification suit, Lyft paid its California drivers a \$12.25 million settlement and drafted new terms of service for its workers nationwide. The possibility that both companies will have to reorganize their business models by recognizing drivers as employees is real and could exponentially increase their cost of doing business.

³ Reibstein, Richard J., Lisa B. Petkun, and Andrew J. Rudolph. "The 2015 White Paper on Independent Contractor Misclassification: How ..." Pepper Hamilton LLP.

IV – Using a Staffing Agency to Mitigate Risk

The best way to reduce the risk of hiring contingent labor directly is to use a reputable staffing agency. Such agencies mitigate risk through:

- A. Worker Classification Clarity.** As employment professionals, staffing agencies make it their business to know and abide by all worker-classification laws. Using a staffing agency reduces the risks to employers of tax penalties and fines, including years' worth of back taxes on consultants' wages.

In fact, “using a responsible workforce organization may dramatically reduce the risk of such liability, as well as the likelihood of a lawsuit challenging the classification of a group of workers paid on a 1099 basis.”³

- B. Improved Security.** Staffing agencies thoroughly vet consultants, drastically reducing threats to personal and cyber security. They take the time required to check references and carefully evaluate prior work before presenting a consultant for consideration. In addition, staffing agencies also have the expertise to provide employment and citizenship verification, background checks, and drug tests as requested by clients.
- C. Higher Worker Quality.** When a company has a specific position to fill, taking advantage of expert help throughout the search, review, and placement process saves time and money and increases the odds of a successful match. The experienced recruiters of a staffing agency not only review each consultant's résumé and skill set, they take the time to meet with the potential hire and ensure an ideal fit with the position as well as the client. With all that face time, good recruiters have built vast networks of available and known talent to call on at a moment's notice. What's more, staffing agencies stay current with the industry and can assure clients that they are not overpaying for work.

V – Additional Benefits of Working with a Staffing Agency

In addition to mitigating the risks of hiring contingent labor directly, the expertise a reputable staffing agency brings to finding, evaluating, and hiring consultants provides employers with three distinct benefits:

- A. Time saved.** Every hiring manager knows how long it takes to recruit new talent. Each step of the process—from sourcing consultants to interviewing to negotiating

contracts—can take weeks, if not months. A staffing agency assumes almost all of these tasks, freeing up the hiring team’s time, and filling positions quickly. In addition, because the consultant is actually employed by the staffing agency, the client saves hours on calculating payroll, benefits, and taxes.

- B. Cost reduction.** Because the staffing agency performs the majority of the recruitment and selection tasks, the client company enjoys significant savings on its own labor. The staffing agency usually also assumes the duties and fees associated with candidate sourcing, scheduling interviews, employment and citizenship verification, background checks and drug tests, sparing the client substantial costs.

Finally, the staffing agency is responsible for the cost of the consultant’s employment insurance, disability insurance, and other benefits. Utilizing a consultant supplied by a staffing agency allows the costs associated with human capital to be variable versus a fixed cost.

- C. Productivity.** Employee productivity increases when resources are shared. Having a qualified and vetted consultant in place reduces downtime.

VI – Conclusion

If the trend of the last few years continues, the contingent workforce will only gain more ground. Forward-thinking employers are best advised to partner with a trustworthy staffing agency today for two important reasons:

1. They are best able to leverage the sources of quality consultants to find the right one with the skills, experience, and pay rate that best meet clients’ needs, and
2. They can provision the consultant compliant with federal and state employment laws and regulations, dramatically reducing the regulatory risks to clients associated with working with independent consultants and other forms of contingent labor.

By saving time, and reducing the costs and risks associated with noncompliance in a rapidly shifting labor landscape, companies can enjoy great access to top talent and get down to business.

To learn more, below are suggested sources:

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