

# Building a Successful Team- Options for Hiring Employees

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# Economic Reality



# It's time!

- Your business is successful!
- You're ready to increase your capacity
  - And share the work load

You need some help

# Several Options

- Independent Contractors
- Temporary Employees
- Leased Employees
- Direct Hires

There are pros and cons to each...  
particularly when starting out

# Independent Contractors

- aka Freelance or “1099ers”
- By definition – ICs are NOT employees
- ICs ARE self-employed – which means:
  - You have no employment relationship
  - ICs are NOT subject to your employment taxes or employment laws, no payroll, etc.

# Independent Contractors

- ICs can be a great asset for a business when done correctly
  - Projects, technical/specialized expertise, etc.
- IC relationships are VERY regulated
  - by IRS, DOL and other agencies
  - And they are actively looking at this...

# Independent Contractors

- U.S. & State IRS, U.S. & State Dept. of Labor, Workers' Comp, Unemployment Div, & others each have standards or "tests"

To determine whether an employment or Independent Contractor relationship exists

No one test or factor is the determining factor



# Independent Contractors

## What's the big deal?

As long as both parties agree on the terms of the relationship, that's all that matters, right?

# The Great Divide

- Employers often prefer IC relationships
  - No employment taxes, wage & hour laws, social security, Medicare, workers' comp, etc., fewer legal obligations & less recordkeeping
- Government agencies often prefer employee relationships
  - Fees & Tax Revenue!
  - Protect employees

# Independent Contractors

➤ DOL says an IC relationship may exist when one:

- can earn a profit or suffer a loss from the activity
- furnishes the tools and materials needed to do the work
- is paid by the job or project
- works for more than one company at a time
- invests in equipment and facilities
- pays his or her own business and traveling expenses
- hires and pays assistants, and
- sets his or her own working hours

# Independent Contractors

- DOL says an employment relationship probably exists when an individual:
  - can be fired at any time (at-will employment)
  - is paid by the hour (FLSA non-exempt employee)
  - receives instructions from the company
  - receives training from the company
  - works full time for the company
  - receives employee benefits
  - has the right to quit without incurring liability, and
  - provides services that are an integral part of the company's day-to-day operations.

# Independent Contractors

- According to the U.S. Supreme Court the following factors are significant when determining whether a worker is an Independent Contractor under the FLSA:
  - whether the worker's services are an integral part of your company's business (this points to employee status)
  - the permanency of the relationship (the longer the relationship, the more likely it is that the worker is an employee)

# Independent Contractors

- whether the worker has invested in facilities and equipment (if yes, this points to independent contractor status – but not always...)
- how much control your company has over the worker (the more control you have, the more likely the worker is an employee)
  - Do you determine:
  - The hours & days of work, and attendance standards?
  - Units produced or output in a time period, or according to a schedule, etc?
  - Disciplinary actions or performance feedback?

# Independent Contractors

- whether the worker has opportunities to make a profit or suffer a loss (compared to regularly earning a set amount of money – as a wage, like an employee)
- whether the worker competes in the open market (if so, this points to independent contractor status), and
- the extent to which the worker operates a truly independent business (the more independence i.e. setting own hours, days, project dates, etc., the more likely the worker is an independent contractor).

# **You need to get this right**

**Resolve any questions or doubts about  
employee or IC relationships**

**Review the IRS & USDOL IC tests**

**Contact your tax advisor, employment  
specialist, attorney, etc. if needed**

**Over 30 percent get this wrong**



# Temporary Employees

- Hire through a staffing agency – fastest way to hire an employee
- Staffing agency takes care of:
  - Pre-employment screening, interviews
  - Drug testing, background & reference checks
  - Compliance documents i.e. W-4, I-9, etc.
  - Payroll processing and payroll taxes, workers' compensation coverage, etc.

# Temporary Employees

- Agency temps aren't your employees
  - Co-employment relationship
    - Exclusive remedy
  
- You need to provide:
  - Breaks & meal periods
  - Workplace compliance posters
  - Employee direction & guidance

# Leased Employees

- Effectively outsourcing your employment processes
- Everything you get with a temp employee, longer term
- They aren't your employees
  - Co-employment relationship
- PEOs – fee for services – & they are the employer of record

# Direct Hires

- Direct hires are your employees – you hired them!
- Can be temporary, part time, full time, etc.
- You control the employment relationship
  - And assume all liability
  - The duties & responsibilities the staffing agencies were handling are now yours

# Direct Hires

## ➤ What you need:

- EIN – Federal Employer ID Number (IRS)
- Workers' compensation coverage (State)
- Payroll processing, including W-4, I-9, DOJ new hire reporting
- Basic understanding of wage & hour laws
  - Min. wage, breaks & meal periods, overtime, set your pay periods, posters, employee files

# Pros and Cons

## ➤ Temps/Staffing Agency

- Allows you to 'test drive' an employee without first setting up everything you would need with a direct hire employment relationship.
- If it doesn't work out you contact the agency and request another employee
- Temps are typically not considered a long term employment solution – temp to hire?
- Fees typically range 30-50 percent of wage

# Pros and Cons

## ➤ Leased Employees

- Longer term solution to an agency temp
- You are outsourcing your employees and employment processes
- Established co-employment relationship
  - You are not the employer of record
- Fee for services – you can add benefits, etc.
- Fees typically range 15-35 percent of payroll

# Pros and Cons

- Administrative Service Org (ASO)
  - Longer term solution to an agency temp
  - You outsource your employment-related processes & retain employer of record status
    - Employees are yours
  - Fee for services
  - Fees typically range 10-30 percent of payroll



# Pros and Cons

## ➤ Direct Hires

- They are your employees – your team
- You assume responsibility for all employment related functions
- Employees may feel they are part of the company – more committed
  - You define the culture
- Costs typically range 5-25 percent of payroll

# Be Careful

## ➤ Freelancers

- They are either employees or independent contractors – not a separate category!

## ➤ Hiring Family Members

- There can be tax benefits
  - They are still your employees
  - Talk to your tax advisor

## ➤ Paying “Under the Table”

- Very risky

"In the end, an organization is nothing more than the **collective capacity** of its people to create value."

Lou Gerstner (1942 - )

former Chairman & CEO of IBM

# Never forget this...

*Having and keeping the right people in the right jobs doing the right things is your greatest asset*

*Anything else is a liability*

Make it one of your top  
business & employment initiatives

# Resources

Small Business Administration – Hire and Retain Employees

<http://www.sba.gov/category/navigation-structure/starting-managing-business/starting-business/establishing-business/hir>

Oregon Unemployment Insurance tax - Homepage

<http://www.oregon.gov/EMPLOY/TAX/Pages/index.aspx>

Oregon Bureau of Labor & Industries (BOLI) – Oregon’s employment and wage & hour resource

<http://www.oregon.gov/BOLI/pages/index.aspx>

Workers’ Compensation Division, Oregon Dept. of Consumer & Business Services – for employers

[http://www.cbs.state.or.us/external/wcd/communications/emp\\_info.html](http://www.cbs.state.or.us/external/wcd/communications/emp_info.html)

Why Do I need Workers’ Compensation Coverage, A guide for Oregon Employers – a good overview

<http://www.cbs.state.or.us/external/wcd/communications/publications/2852.pdf>

Oregon Business Information Center FAQs – a good starting place for general business start-up questions

[http://egov.sos.state.or.us/br/!PKG\\_BC1\\_WEB\\_INTERVIEW.DISPLAY\\_FAQ?p\\_current\\_faqcode=GENERAL&p\\_current\\_expanded\\_id=#QID](http://egov.sos.state.or.us/br/!PKG_BC1_WEB_INTERVIEW.DISPLAY_FAQ?p_current_faqcode=GENERAL&p_current_expanded_id=#QID)

Holloway Human Resource & Management Consulting – a lot of good info and links

<http://www.hhrconsulting.com>