



Independent Contractors for Global Organizations

Insights

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As the global market grows seemingly smaller, more and more companies are expanding their reach around the world. Some companies send U.S. employees overseas, while others hire locally, or even utilize local independent contractors. As in the United States, companies must be mindful of the risks involved when hiring independent contractors in their international operations.

While different countries have different levels of scrutiny when it comes to determining who is an independent contractor and who is an employee, many of the principles remain the same. The main questions deal with the company's control over the person's work. Thus, if you are considering hiring independent contractors overseas, or already do, these are some questions to consider:

- **Does the company control what the worker does or how the worker goes about completing a task?** If the company controls when and where the work is done, what tools or equipment to use, what order or sequence to follow in completing a task, then this may indicate that the business has a right to direct and control how the worker does the task and may implicate an employee-employer relationship instead of an independent contractor relationship. An independent contractor typically controls where, when, and how they work.
- **Does the company provide training to the worker?** Independent contractors typically use their methods to complete a project. Thus, if a worker must be trained to perform the work in a particular manner, this may indicate an employer-employee relationship.
- **Does the worker provide services to other clients?** If the worker exclusively works for the company, this is a strong indicator that there is an employer-employee relationship. If the worker provides services for the company on a full-time basis on a continuing basis, they may be deemed an employee. Also, if the worker is required to enter into some form of non-competition agreement with the company and is forbidden to work for other companies, this will further implicate an employer-employee relationship.
- **Does the worker control his/her opportunity for profit and loss?** An independent contractor typically invests in his/her own supplies, tools, equipment, and determines the manner in which the work is done. If the company pays the worker on a project basis, then the independent contractor maximizes his/her profit by working efficiently and controlling costs. Further, the independent contractor's earnings are not limited to and controlled by one company.

- **Does the worker provide a service that is part of the company's core business?** If the worker performs the same tasks that the company's employees do, then it is likely that the company will have the right to direct and control his/her activities, and there is an employer-employee relationship.

Misclassifying a worker as an independent contractor can have serious and costly consequences. It will be important to assess the local laws of the country in order to determine the necessity for permits, contract requirements, language requirements, how to best structure payments, what type of entities to best enter into a contract with (a company versus an individual), indemnity provisions, tax implications, and other implications.

Below are a few examples of independent contractor considerations in other countries:

- **Canada** – In Canada, certain factors must be considered when determining if a worker is an employee or self-employed individuals. These factors differ depending on the Province or Territory law which governs the arrangement. For example, under the law in Ontario there are employees, independent contractors, and dependent contractors. Like independent contractors, dependent contractors have their own businesses and do not have the usual characteristics of employees (e.g. health benefits, etc.). However, dependent contractors often work exclusively for one company and may perform essential functions for that company. Due to this reason, dependent contractors are typically entitled to longer reasonable notice if the other party intends to end the relationship. Dependent contractors are typically treated as “self-employed” for income tax purposes.
- **China** - There is technically no concept of “independent contractor” in China. Employment relationships are governed by extensive labor law, employment contract law, and various rules. However, there is a labor-service relationship that is akin to the concept of independent contractor. The labor-service relationships are governed by the Civil Code and the Contract Law. Foreign corporations who do not have permanent establishments in China may engage with “labor-dispatch service companies” which hire employees and then second them to work for other entities through labor-service secondment contracts. These workers are considered employees of the labor-dispatch companies.
- **India** – India is divided into several states, each with its own labor laws. These laws are applied differently depending on the type of laborer in question. Work with independent contractors is permitted in India under the Contract Labour Act, 1970. However, if the business is not of an “intermittent nature” in respect to the contract entered into by it with a third party contractor, the company may be regarded as a principal employer. There are also various tax risks for a U.S. company that engages independent contractors in India.

It is of course always important to be mindful of U.S. laws when employing independent contractors overseas. A company's tax responsibilities in the United States will be determined on whether the international independent contractor is properly classified. The company will also need to be

international independent contractor is properly classified. The company will also need to be familiar with its state's requirements regarding the classification and/or misclassification of independent contractors. For example, in California, all "California businesses" must report their use of independent contractor if it pays the contractor \$600 USD or more for services performed "in or outside California." This includes independent contractors outside of the U.S. if the company is headquartered in California. There are also reporting obligations for companies simply operating in California. Accordingly, the proper classification of independent contractors versus employees is critical in ensuring both U.S. and international law compliance. Companies should keep these considerations in mind in order to develop an effective international independent contractor relationship.

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