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Hiring Independent Contractors

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

Independent contractors can be a great way to provide valuable services for your business, but it is important to ensure that the contractor is properly classified, that your contract addresses important provisions, and that you obtain the proper tax information. We break these considerations down in the information below!

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- 1. Do you truly have an independent contractor?** While having a person (or company) work for your business as an independent contractor can have some great cost benefits (hello, no payroll costs, health insurance, withholdings, etc.), it is important to ensure that someone working for you actually meets the qualifications of an independent contractor. Recently, the federal government adopted the stringent standards that have been applied by courts for years in determining an employee vs independent contractor.

The Internal Revenue Service (which oversees worker classification and taxation) largely focuses on factors under three main categories:

- Behavioral: Does the company or the contractor control how the job is done, when it is done, and the specifics of the job?
- Financial: Is the company providing all the workspace, supplies, equipment, etc.? Or is the contractor providing them and invoicing the company for their time and external costs?
- Type of Relationship: Does the contract have an end date? Is there a clear contract establishing the independent contractor relationship? (more on that next;) Does the contractor provide these types or offer these types of services to other clients?

It is important to analyze these factors (and look into the full IRS list of factors) before hiring someone as a contractor. If you find that the company is controlling much of the relationship, work, and hours then you likely have a w-2 employee rather than a contractor.

- 2. Have a contract.** We hinted at this in the first point but having a clear independent contractor agreement establishing the scope of services, term of the Agreement, payment, external expenses, etc. helps to meet the requirements detailed above for an independent contractor and helps communicate key terms and conditions to the relationship. Operating without a contract leaves the relationship open to misunderstanding, miscommunications, and intellectual property issues. Don't have a contract? Don't worry, we got you.

<https://www.trellispgh.com/product-page/independent-contractor-agreement>

- 3. Include these key provisions.** Having a contract is one thing, but having a GOOD contract is even better (another reason why a Trellis template may be a good option!). It is important to address key issues in your contract such as when you want invoices to be given to your company, when you will pay contractors, confidentiality provisions, and crucially-intellectual property.

Intellectual property ownership is important for two reasons:

- You want to make sure they aren't delivering any work product to you that violates another company's intellectual property and gets you into legal hot water; and
- You want to make it clear whether or not you own the work product they create for you, especially if you hire a contractor to create a logo or other artistic materials. Unlike a w-2 employee, the work product created by contractors is not typically considered to be owned by the Company so it is important to have a provision detailing ownership in your contract.

Also, remember, you want to have terms around how the contract can be terminated!

- 4. Get a W-9.** Even though an independent contractor is not on payroll, a company still has to issue a contractor a tax document detailing how much has been paid to the contractor over the past year. This is called a 1099 and must be given to a contractor by January 31st of the following year. But you're probably like wait, this provision says W-9?! That's because a W-9 is the form you should have your independent contractor fill out to give you all the information you need for the 1099. including the person's (or their company's name), EIN or social security number, and address. Have any new contractor you hire fill this out when they sign their contract so you can get all the paperwork out of the way!

We hope this resource helps give you some important tips on working with independent contractors. Feel free to check out more about Trellis Legal at www.trellispgh.com!