



TRELLIS

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Legalese: This vs. That

Remember, this outline is a general guide.

Be sure to contact an attorney if you have questions or specific issues.

Legal jargon can be complicated. Sometimes it's hard to tell the difference between one thing and another. This trellis resource dives into the differences between a few commonly confusing legal terms in all different areas of the law.

1. Offer Letters vs. Employee Contracts

A potential area for confusion is that of the employment contract. On first blush, it may sound like a good idea to have a contract between an employer and the employee so that you can make it clear the terms of someone's employment. However, this is only true in certain circumstances. Pennsylvania is an at-will employment state. This means that an employer can let their employee go for any reason (unless it's discriminatory, or otherwise protected by law). Having an employment contract could negate that at-will status, losing good protection as an employer. An offer letter, instead, provides the important details around employment – compensation, bonus structure, expectations, duties, benefits, and more – while still explaining that the offer letter does not create an employment contract. ([Read our intro guide to offer letters blog here.](#))

Employment contracts make more sense if you're hiring highly specialized, competitive employees. A **contractual employee** is where a contract exists between the employee and employer, and usually has limitations around how the employee can be terminated or can quit, set expectations and obligations, and sometimes a pre-determined time period under which the employee must work for the company or pay a penalty for termination. As an employer you likely do not want to risk at-will employment unless an employee is very key. Contractual employees are rarer in small businesses and usually are reserved for very high-level positions with significant salaries. These are the types of employees who have the leverage to negotiate more complex employment structures. We definitely recommend talking to a lawyer before creating an employment contract.

A few other helpful resources and blog posts for hiring and retaining employees:

- Resource: [Download our free resource for onboarding employees here](#)
- Blog post: [Taking the nerves out of NDAs non-competes](#)
- Blog Post: [Employment basics for new employees](#)
- Blog Post: [Key Terms for Employee Handbooks](#)

2. Independent Contractors vs. Employees

You may have heard of an option to bring on independent contractors to help you in your business instead of hiring employees. What many companies don't realize is that whether or not a worker can be treated as an employee or independent contractor depends on specific guidelines set out by the Internal Revenue Service (IRS) and classifying a worker incorrectly could lead to heavy costs. The line between what makes someone an independent contractor or employee might be a lot thinner than you think, but the differences between the two can be great. Independent contractors typically offer specialized skills that can help a company out when they're in a bind or need more capacity. They are paid directly without benefits, taxes, or other withholdings taken from their pay like they would from an employee's paycheck. Rather, independent contractors are responsible for paying their own taxes on the compensation they receive. Unlike with most employees (as explained above) we recommend [having a contract](#) between the company and an independent contractor to outline the scope of the contractor's services, how they get paid, and many other details.

You can read about the different factors that determine what type of worker someone is [in our blogpost here](#).

1. Member-managed LLC vs. Manager-managed LLC

If you have a limited liability company (LLC), there are a few ways you can operate this business. The first is as a member-managed LLC and another is a manager-managed. The main difference between the two is who handles day-to-day operations and decision-making. Owners of LLCs are called members, so in a member-managed LLC, the owners (members) are the ones directly involved in daily decision-making. In a manager-managed LLC, the owners have designated specific individuals, who may be owners or may not be owners in the business, who make daily decisions in operations. The company then also has members (owners) who are not as involved in the day to day decision making but who have authority in major company decisions such as removing other owners, taking on big investments, among others.

How do you know which business type you have or should have? The answer to this question really depends on how you run your company. Perhaps you have investors who are owners but not part of the day to day (note, definitely talk to a lawyer before you take on investors as there may be other legal implications like securities laws). The structure and what your business' decision-making model is should be outlined in your LLC's [operating agreement](#), which is the LLC's governing document, and it sets up which type of model your LLC is, how decisions are made, and who – owners or managers (if you have them) – has the authority to make what decisions. We highly recommend working with an attorney to make sure your operating agreement reflects your wishes as a business owner and operator and we also have both [member-managed](#) and [manager-managed](#) versions of operating agreements available for sale in our DIY Documents library.

2. LOIs vs. Leases

The main difference between these two documents is that one is legally binding (lease), and the other can be very helpful in negotiations and drafting (LOI). Letters of Intent (or LOIs) are a way to get everyone on the same page before a lease is signed. There could still be *some* legally binding terms in an LOI, like confidentiality or exclusivity, but most of the other terms are to be relied on in good faith. (In other words, it's super uncool to not honor the terms agreed upon in one). LOIs are like the ingredient listing at the top of the recipe. Sure, they aren't the whole enchilada and they don't always include all of the

important terms – bake time, temperature, or *when to fold the cheese* – but they do tell you the key ingredients that you will need to move forward. From there, you can draft your more complex lease with a strong frame of reference. LOIs can also be used in other types of transactions such as buying a business or negotiating an agreement. [Read our blog about LOIs here.](#)

A commercial lease is the enchilada. It's the legal document that describes the full relationship. It should have important terms like commencement, build out and termination, allocation of costs like maintenance and repairs, insurance requirements and so much more (read [these in our blog post](#)). Commercially leased spaces don't have as many legally required protections of tenants as residential ones so it's important to work with an attorney to negotiate and advocate for ones that meet your needs. Download our recent resource on [navigating landlord-tenant relationships](#) or [opening a brick and mortar](#).

3. Non-profit vs. For-profit

A non-profit corporation is a mission-driven type of entity with financial goals directly tied to advancing a community interest or social cause – i.e., they must serve the public in some way. There are many types, but a common one is the 501(c)(3), which is an IRS designation of tax-exempt status of organizations with purposes that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. Although there are other designation categories (such as 501(c)(7) for a social organization, like a volleyball club). Forming a nonprofit and applying for tax-exempt status can be a long complex process, and founders of organizations that are non-profits may not enjoy the level of control in their mission they lose due to financial oversight and board accountability. Learn more about how non-profits can get started before receiving tax-exempt status in our [blog here about fiscal sponsorship](#).

A for-profit, on the other hand, is a type of entity that's sole purpose is not a social cause, for example an LLC or a Corporation. This may be misleading, however, as being designated as a 'for-profit' does not necessarily mean you can't have started your business with social good in mind. Very often clients with mission-oriented goals think they want to start a non-profit corporation. But that's not always the best option. Being a non-profit also may come with quite a few different legal requirements and some loss of control over the goals of the organization. Being a for-profit, such as an LLC doesn't necessarily mean you're a company interested in growing profits. Many companies do not make profits, or share a large amount of those they do with a mission focus. However, for-profits often do not have access to the grants and funding opportunities non-profits do. When you're starting out, it's a good idea to work with an attorney to understand the different entity structure options you have and the potentially complicated governance involved in each, especially if you're starting a non-profit.

Here are a few more blog posts and resources for download around other legal terms:

- [Client agreements vs. independent contractor vs. subcontractor agreements](#)
- IP Resource: [Trademarks vs. Patents vs. Copyrights](#)
- Resource: [Waivers vs. releases](#)
- Anything else you'd like to see added here? [Drop us a line](#) or schedule a free consultation today.