

Classify Independent Workers with Confidence

Seven strategies to mitigate risk and keep government auditors at bay



Like a freight train, Corporate America is speeding toward greater flexibility and lower operating costs by increasing the utilization of independent contractors, freelancers and temporary employees. At the same time, Congress is racing to collect every possible tax dollar by introducing the new Payroll Fraud Protection Act and doling out \$21.3 million to the secretary of labor to make sure companies don't classify employees as independent workers.

Businesses could bear the brunt of the impact when the two forces eventually collide, unless they make a concerted effort to correctly classify independent workers and proactively prepare for an onslaught of new legislation and government audits by adhering to a slate of best practices.

"Organizations are solely responsible for correctly classifying independent workers," says Sue Ortiz, vice president of compliance and customer service. "But it's not enough to plug some data into a database or sporadically collect documentation because the government is drafting legislation, initiating audits and levying hefty fines on offenders."

Best Practices

Craft a centralized evaluation process

Nurture a culture of compliance and mitigate risk by establishing a set of business rules and distinct processes to evaluate the status of every independent worker. In-house and outsourced programs can be equally effective as long as compliance specialists collect the data and documentation to compare each worker's situation to federal, state and IRS standards and possess the wisdom to confer with line managers, navigate gray areas and render prudent classification decisions. Finally, increase systemic accountability for compliance by appointing an expert to implement and oversee the evaluation process, enforce the rules and usher in change by educating and mentoring line managers.

Make sure it's clear and consistent

Make it easy for managers and contractors to embrace new compliance policies by explaining the reasons for change, establishing a zero-defect goal and deploying a clear, repeatable process to evaluate every independent worker before an assignment.

Offer continuing education

Compliance vendors should be familiar with current laws, monitor emerging regulations and stand ready to amend current evaluation procedures in response to evolving risk. Additionally, they should educate line managers through Webinars, training courses and reference materials so they can help the company avoid fines and penalties by complying with emerging regulations.

Engage in collaborative decision making

Some experts predict that contingents will comprise 50 percent of the workforce by 2020, leaving little doubt that companies need a technical solution to enable the burgeoning compliance process. But software alone can't resolve complex classification issues because algorithms can be manipulated by managers who fear the defection of critical talent or wily contractors who game the system to produce a favorable outcome.

- Evaluate every worker using a transparent, unbiased and consistent process.
- Survey workers and managers to uncover assignment and status details and compare their responses to spot possible anomalies.
- Avoid error-prone automated scoring systems that use a formula to classify workers. Status decisions should be rendered and confirmed by experienced compliance specialists who consider both hard data and subjective criteria.

Create convenient procedures

Compliance will be an uphill battle if the process is confusing or cumbersome. Offer participants access to Web-enabled surveys that can be completed in 10 to 15 minutes. Ensure you collect documents to support the answers they provide, such as Articles of Incorporation, marketing materials and insurance certificates, but allow participants the ease of uploading documentation into the system where it should be electronically stored for ease of access and accountability. Select a flexible provider who is willing to tailor a program around your company's needs, understands your VMS and MSP, and offers easy access to payrolling services in case a contractor needs to be transferred.

Foster comprehensive risk mitigation

Establish and document the financial, behavioral and relationship controls that characterize your company's engagement with each independent worker and partner with a compliance provider who is familiar with local wage and hour, ADA and FLSA regulations. Partnering with a knowledgeable vendor and taking a comprehensive approach to risk management will help avoid the violation of other employment-related laws in cases where an independent worker needs to be reclassified or transferred to a payrolling service.

Be prepared for an audit

Document every step in the evaluation process and build a case file to defend against IRS and state audits. Prepare for a real event by engaging in random control tests or self-audits and employ an automated alert system to re-evaluate independent workers at set intervals or following a change in assignment or SOW. ■