**Key Terms for Structuring Arrangements with Employees and Independent Contractors**

|  | **Employee** | **Independent Contractor** |
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| **Salary & expenses** | * Employees are entitled to salary, which can be fixed or hourly, depending on the employee’s status
* Employees are also entitled to reimbursement of business expenses (e.g., travel expenses)
 | * Payment should ideally be a per-project fee – hourly pay should be limited to industries where hourly pay is standard (e.g., lawyers)
* Avoid compensation that is not tied to either specific projects or hours worked
* All expenses should be borne by the independent contractor, not the company
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| **Benefits** | * Some employees are entitled to benefits
* Employers are required to withhold certain taxes from an employee’s salary
 | * Company should not provide benefits or withhold taxes
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| **Term of work** | * Indefinite term is allowed (in fact, most employment in the U.S. is “at will,” i.e., with no defined time period)
 | * Contract should be limited by time or project
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| **Means of providing services on behalf of company** | * Company can fairly require employee to attend company trainings and follow company policy
* Company should provide all equipment necessary for employees to perform their job functions
 | * Company should control only the end result – not the means of getting there
* For example: contractor should be allowed to use his/her own equipment, and should not be required to follow company policies
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| **Other business activities** | * Company may reasonably require some form of exclusivity
 | * Independent contractor should be allowed to work on other jobs for other companies, as long as any other work does not hinder the contractor’s ability to perform under the contract
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| **Insurance**  | * Company must provide appropriate workplace insurance
 | * Independent contractor should be required to obtain liability insurance (although check applicable state requirements for your industry)
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| **Confidentiality** | * Company gets maximum protection from a broad confidentiality undertaking by employee
 | * Broad confidentiality provisions can be seen as indicators of an employment relationship – narrowly tailor the agreement to the circumstances of your company and the contractor’s work
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| **Ownership of Intellectual Property** | * Employees should assign all IP produced in the scope of work to the company
 | * Same
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| **Non-compete & non-solicitation agreements** | * Appropriate as long as narrowly tailored to the circumstances
 | * Usually not appropriate
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