**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 |
| **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 |
| **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 |
| **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 |
| **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 |
| **Insurance** | * Company must provide appropriate workplace insurance | * Independent contractor should be required to obtain liability insurance (although check applicable state requirements for your industry) |
| **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 |
| **Ownership of Intellectual Property** | * Employees should assign all IP produced in the scope of work to the company | * Same |
| **Non-compete & non-solicitation agreements** | * Appropriate as long as narrowly tailored to the circumstances | * Usually not appropriate |