

the VANTAGE POINTE™

Proactive Perspectives On Issues Affecting The Workplace

IS THIS MY EMPLOYEE?: Are your “Independent Contractors” Truly Independent?

Labor costs make up a huge part of the average company’s expenses, yet employees are also a company’s most important asset. While most companies require a core group of full time, dedicated employees, there are also times when project-specific expertise is required or just-in-time help is needed during busy periods. In such situations, many businesses have turned to independent contractors. By creating this “contingent” workforce, businesses have access to skilled, flexible workers who are paid only when work is available and for whom they do not have to provide workers compensation or unemployment insurance, overtime pay, or other benefits received by regular employees. A dream come true, right? Often, yes. However, employers who mislabel workers as “independent contractors” could find their “dream” scenario quickly turn into a nightmare.

What is an “Independent Contractor”?

Independent contractors are self-employed individuals who contract to perform a specific assignment, either for a set period of time or until completion of the specific assignment. Because they are self-employed, they may provide their services to a number of service recipients at any given time. Independent contractors are expected to exercise more control over the method and timing by which they perform needed services. The term “freelancers” is often used interchangeably with “independent contractor”, though “freelancers” are generally highly skilled technicians, such as engineers, computer specialists or graphic artists.

There are several tests, developed by the EEOC, the IRS and the courts, which help determine whether a worker is an independent contractor or an employee. Many courts, including the 7th Circuit, use a “hybrid” test, combining elements from each test and focusing on:

- The extent of the company’s control over the work;
- The field, job specifics and/or the skill required;
- Who bears the responsibility for equipment and costs of the operation;
- The method and form of payment; and
- The benefits and the length of the job commitment or expectation.

Are Independent Contractors Right For You?

In order to determine whether or not your company is one that can effectively and legally utilize independent contractors, you must look at the jobs and the projects for which you are thinking of utilizing these workers. Are you looking for ideas, creativity or skills outside of those of your core employee base? Are you looking for someone to fill in on a particular project, but not on a constant basis? Are the projects something that someone can work on his or her own time with little direction? Are you comfortable with having people in your workplace who are not, and whom you cannot represent to others as, your employees. Are you able and willing to relinquish some control over your projects? If you answered “yes” to these questions, then independent contractors could be for you.

What If You Mistakenly Designate “Employees” As “Independent Contractors”?

If independent contractors are not truly “independent,” you may wind up owing the workers and the government money, including back overtime pay as well as the value of employee benefits to those mistakenly-designated individuals.

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MENTOR READY? PART II Breaking Down the Barriers to an Effective Mentoring Program.

Positive, effective mentoring relationships are one of the keys to growing and maintaining a healthy workforce. In Part I of this three-part series, you learned how to prepare your organization for a successful mentoring program by establishing your goals, committing the leadership, assessing and addressing views of mentors and gauging the willingness of employees to participate. Now that you have laid the groundwork for an effective program, you must become aware of and break down some common barriers in mentoring relationships that often impede the overall success of your program.



The Pointe:

The Pointe: A good mentoring program requires an understanding of and incorporates ways to avoid the common pitfalls in these relationships.

What Are Some Common Barriers?

In a perfect world, everyone would recognize the importance of mentoring relationships, be committed to the idea and the process, willing to offer their time and energy to assure their success, know how to be a good mentor and/or mentee and pass their knowledge on to others. Of course, this is not the world in which we live. Many organizations and employees have expressed frustration over what they feel was a meaningless or unworkable mentor program or relationship. The failures of such programs and relationships can be avoided or remedied; however, if employers first prepare themselves for the following common barriers:

- Employees do not see what is “in it for them”
- Time is not set aside for relationship building
- A “crutch” mentality by the mentee
- A controlling or possessive mentor
- The mentor and mentee are not a good match

How do you break down the barriers?

Recognizing that not every mentor relationship is going to be perfect from the get-go, the organization and the participants must be flexible and understand that success is always a work in progress. However, there are some steps that the organization can take to avoid some of the barriers in the

first instance and effectively deal with them when they arise:

The “win-win” message: Both the mentors and the mentees sometimes have to be reminded why they signed up for this in the first place. The initial excitement of a new program may fade over time and it may begin to be viewed as simply a drain of their time and resources. Remind them why they committed to this in the first place, and point to the progress that they have made (i.e. professional development, increased productivity, higher quality work and professionalism).

Make Time: Sometime mentors and mentees treat the mentor relationship as something that they can focus on only when they are not busy or do not have anything else to do. Of course with that approach, mentoring would never happen. Taking time to meet with each other and build the relationship should be viewed as important work — just like other workplace responsibilities. Both the mentor and the mentee should have goals and expectations when it comes to meeting and following up with mentors. These meetings should have a place on the participants’ calendars, along with any other important meetings, and it should not be the one that is always cancelled

Ensure other valuable working relationships: If the mentor is also the only person that works with and evaluates the mentee, then the mentee may rely too much on the mentor, or the mentor may start to feel like s/he “owns” or “controls” the mentee. If possible have the mentee work on projects with a number of other people (thereby also increasing the possible pool of mentors) and have someone other than the mentor perform the evaluation.

Get tips from success stories: If the mentor and the mentee complain of not being a good match, first determine if it is fixable by looking at those relationships that are working. What are they doing right? What tips or techniques can they provide to the struggling pair?

Know when to say when: Sometimes there are too many barriers, or the personalities, working styles and goals just do not and will not align for a successful mentoring relationship. Recognizing this and moving on to find a good match for each participant will demonstrate the long-term commitment of the organization to the mentoring program and make the participants much more willing to make the next relationship a success.

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While each mentor relationship will be unique, presenting different goals and challenges, by preparing your organization for the possible problems, you will be much closer to ensuring that your organization will reap the short and long term benefits of mentoring.

In Part III of this series, Vantage Solutions will provide guidance on how to establish a formal mentoring program for your company. In the meantime, if you have any questions about establishing a formal mentoring program, you may contact Vanessa L. Smith at 312.400.0602 or vsmith@vantage-solutions.com.

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Further, you will likely owe back employment taxes and could face additional penalties. You could also find yourself liable to these workers under federal and state statutes that apply solely to employees, such as the Fair Labor Standards Act, Family and Medical Leave Act, Title VII, Americans with Disabilities Act, Age Discrimination in Employment Act, Workers Compensation statutes and others. In many cases, erroneous designation as “independent contractors” can cost companies more than had they simply hired employees in the first instance.

How Do You Keep Them “Independent”?

If you have decided that independent contractors are appropriate and desirable for your organization, you need to make sure that you keep them “independent” to avoid the consequences above. Many companies have been burned by starting out with an impeccable independent contractor agreement, and then completely ignoring it when it comes to the actual relationship between the company and the worker, thereby turning independent contractors into employees. As far as the courts are concerned, an agreement is a factor, but it is the reality of the relationship and the day-to-day treatment of the worker that determines the true legal nature of the relationship.

Control is the key element in all of the tests used by the courts. However, this is the element that companies struggle with the most, and with good reason, as it is their business reputation on the line. There are a

number of steps that employers can take to relinquish control and maintain a true “independent” relationship:

- Specify in writing that the workers are independent contractors and not employees of the Company;
- State that they have no expectation of employment beyond the specific, contracted for task;
- Give them control over the manner and details of how the work will be done;
- Permit them to engage in work outside of the work performed for your company during the terms of the contract (though you can forbid them from performing that work on your premises and from performing work in direct competition to yours);
- Specify an exact duration for the project;
- Refrain from providing them with business cards, company nametags, company vehicles, etc.;
- Pay them on a project or hourly basis and have them invoice you for their time or the project; and
- Train managers on how to properly work with independent contractors.

By taking these steps, you will be well on your way to maintaining successful, mutually beneficial and *legal* independent contractor relationships.

VANTAGE REMINDER

Yesterday the new FLSA regulations, outlined in the Spring 2004 Vantage Pointe, took affect. If you have questions about whether your company is compliant, you may contact any of our employment attorneys at info@vantage-solutions.com or 312.440.0602.



The Pointe:

Control is key: Companies must be willing to relinquish control in order to maintain a true Independent Contractor relationship.

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EMPLOYMENT COUNSELING & CONSULTING



Proactive
Perspectives on
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Our integrated services include policy and procedure development, customized on-site training for managers and employees, ongoing advice and counsel on employment law topics, independent investigations of employee complaints, and conflict and dispute resolution.

For more information, contact us at 312.440.0602.

This newsletter is for informational purposes only and should not be considered legal advice. For more information on any of the articles here, please contact Carrie M. Garcia, Esq. at the number above or at cgarcia@vantage-solutions.com.

A VANTAGE SOLUTION: Solving the Recruiting Woes

Dear Vantage:

The old saying “good help is hard to find” could not ring more true with my company right now. A few years ago we downsized and those of us who survived have had to absorb the responsibilities of those who departed. Since then, we have had a really hard time finding people who fit our “many hats” needs. I am so tired of sifting through hundreds of resumes, just to be disappointed in the final result. What can I do to make sure that we give a realistic job preview, find the right people and, hopefully, free up my busy schedule a bit?

Sincerely,
Trapped in Hiring Hell

Dear Trapped:

Hiring can often be a tedious and frustrating process from employers, but there are ways to ease the burden and target and find the right people. Before you rush to create a want ad or profile on a job bank website, you must define the position and your expectations. Sit down with the manager who requires the position and thoroughly go through the expectations. For example, just telling you that they need a new accounts receivable person does not provide you with much guidance; you need to know exactly what that person will be doing on a

day-to-day basis — is it basic accounting, or will they be required to wear additional “hats” as well? Next, outline the “perfect” person for the job. After you have an understanding of the responsibilities and the ideal candidate for the job, you have to be creative in order to determine where can you find this person. Is this person likely to look for a job in the paper? Are there schools or trade organizations that help with recruiting? Would it be better to hire a headhunter to find someone who may not be looking? You can't assume that the “perfect” employees are going to find you — often you have to go out and find them. Finally, once your sourcing has resulted in some promising candidates, you must make sure all those who interview them know what to look for and how to ask the right questions to obtain valuable information to assist in the hiring decision. By establishing the expectations of a position, outlining the ideal candidate before the interviews, creatively sourcing and effectively interviewing, you will significantly increase your chances of finding the perfect fit!

To learn more about successful recruiting and hiring practices, you should attend Vantage Solutions' Interactive Seminar — **Beyond Want Ads and Resumes: Recruiting and Hiring for Long Term Success**, coming in October, 2004. For more information or to register, please contact Carrie M. Garcia, Esq. at 312.440.0602 or cgarcia@vantage-solutions.com.