

# Webinar Q&A

## Independent Contractor Workforces: A Blueprint for Compliance Risk Mitigation

**Q: Is offering a referral bonus ok?**

A: The current case law is generally silent on this issue, but many companies use this practice without it becoming a central issue in a litigation. For example, Uber used a referral program without it becoming central to its misclassification litigation. With that said, until there is substantial case law on point, a referral bonus program creates some risk because these types of programs are common in traditional employment relationships.

**Q: Is it OK to have employees and independent contractors paid through the same system and on the same schedule?**

A: The best practice is to use separate systems to pay employees and independent contractors. Independent contractors should not be paid on the same payroll system because doing so may create the misperception that they are being treated the same as employees. It's better to use a completely separate settlement tool or, alternatively, to pay independent contractors through the same system that any other vendor is paid.

**Q: Can we have independent contractors and employees performing the same service? If no, how distinct do the different groups services have to be?**

A: Doing so creates risk, particularly in ABC states that ask whether the purported employer and the independent contractor are in the same line of business. For example, if a company employs painters and also contracts with painters, it looks like the company is a painting company. That may lead to liability under the B prong of the ABC test. The different groups of services should be different lines of business, ideally even to a person who does not work in the industry.

**Q: You mentioned occupational accident insurance for independent contractors, can this be a requirement of working for our organization? If so, how do we ensure that they have it?**

A: Yes, this can be required in the contract between the company and the independent contractor's company. One way to ensure compliance with this requirement is to collect certificates of insurance or, alternatively, to work with a third-party company that can collect the certificates on your company's behalf.

**Q: Does also working for a "related" company count as doing work for 2 different companies?**

A: This is a very fact specific question that depends on the related companies' corporate structure and operations. The safest approach is to *not* count this type of arrangement as doing work for two different companies.



**Q: Is it beneficial to force each independent contractor to have a legal business (corp, LLC, etc) as the contracting party?**

A: The best practice is to only contract with other businesses that are legally formed. An independent contractor model is stronger if your company only contracts with mature businesses—i.e., contractors that have been in business for a period of time before contracting with your company.

**Q: Should I have my website content reviewed by an attorney?**

A: Contracting Company websites should be reviewed annually along with independent contractor contracts to ensure content alignment. For companies that don't have employees doing similar work as the independent contractors a good contract will describe the contracting company and the independent contractor in different lines of work. Oftentimes contracting company websites describe themselves as being in the same line of work as the independent contractor. This could cause liability with the B portion of the ABC test.