

# HIRING CONTRACT WORK

Q:

What are the risks of misclassifying an employee as a contractor?

A:

Civil penalties and—if pending legislation passes—severe criminal sanctions.

The Oregon legislature is currently considering a bill (HB 2890) that would make it a felony to misclassify workers, and would prohibit classifying a worker as a contractor if s/he provides services that are within the employer's "usual course of business."

Some work lends itself to a contractor rather than an employment relationship. This can be the proverbial win-win situation, providing the contractor flexibility in scheduling the work and assessing how to apply his/her expertise, and freeing the employer from the time and expense of supervision, training, and benefits. However, even under current law, the consequences of misclassifying the relationship can be significant. Employers should memorialize the agreement in a written contract that spells out the relationship and how it complies with legal requirements.

The analysis is complex, but there are two key elements to consider:

- If the employer is controlling the process (how it is done, as opposed to what the end product will be), the worker is probably an employee.
- If a worker is prohibited from providing similar services to others, s/he is probably an employee.

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