

NEW APPROACHES FOR COMPLIANT INDEPENDENT CONTRACTOR ENGAGEMENT

# MAXIMIZING TALENT MINIMIZING RISK



## Table of Contents

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<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>THE FUTURE OF TALENT IN THE NEW PROJECT ECONOMY</b>	<b>5</b>
<b>RISK: A FIRESTORM OF COMPLIANCE RAINING DOWN ON INDEPENDENT CONTRACTOR CLASSIFICATION</b>	<b>7</b>
<b>WHY “BEST PRACTICES” CWM PROGRAMS FAIL TO EFFECTIVELY ENGAGE INDEPENDENT CONTRACTORS</b>	<b>10</b>
<b>INNOVATION IN INDEPENDENT CONTRACTOR ENGAGEMENT DELIVERS PROVEN RESULTS</b>	<b>15</b>
<b>THE NEW BEST PRACTICES FOR EFFECTIVE IMPLEMENTATION</b>	<b>18</b>
<b>ABOUT MBO PARTNERS</b>	<b>21</b>

## Executive Summary

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*It's not just about risk – although it is true the risks are escalating.*

With each new day, court sentiment hardens toward the presumption that independent contractors are actually your misclassified employees. The first summary judgment in the landmark FedEx class action lawsuit has just been announced in favor of the plaintiffs, with a cascade of similar findings expected next. The DOL and IRS may finally be getting the funding and political will they need to effectively enforce their view of worker status classification and revenue capture. What's more, the states are passing their own legislation left and right, even as two "game-changing" independent contractor compliance bills—TRACA and EMPA—await votes in Congress.

No, it's not only about risk, and how to effectively control and mitigate it. It's also about cost, efficiency, agility, and the new talent imperative. If this is what our recovery looks like, we all need to be smarter this time around. The advances our society once reaped from the Just-In-Time manufacturing supply chain are now being invoked in the new normal economy. The forces of globalization, technology, and demographic shifts have fundamentally altered the way work is accomplished. It's a Project Economy now, and experts predict that about half of the new positions that will be created as the economic engines sputter back to life will be contract based.

Independent contractors are a critically important consideration, but if your organization is like most, they represent a historically intractable segment of your contingent workforce. Even if your business is already realizing the benefits of a centralized managed services approach, independent contractor spend continues to elude the program, and your risk mitigation efforts are failing to deliver something you'd stake your reputation on. And now, just at the time when getting your arms around independent contractor compliance has never been a more pressing issue, you're faced with the prospect of rapidly growing this part of your workforce.

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*By focusing on the root cause of independent contractor engagement challenges, rather than chasing symptoms, workforce program managers will reap significant compliance and performance results.*

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Frankly, conventional Contingent Workforce Management (CWM) approaches are weak when it comes to wrangling independent contractors. They simply weren't designed for this. But all is not lost. Relatively recent innovations in independent contractor engagement models are now being integrated into more traditional VMS/MSP programs, and are delivering the kind of results that will allow your business to successfully transition into the new normal. By focusing on the root cause of independent contractor engagement challenges, rather than just chasing after the symptoms, workforce program managers will be able to reap significant compliance and performance improvements, and even win some ROI in the process.

This paper attempts to outline the approach that underpins these proven compliance and performance results in a generalized context. With the appropriate customization to your business needs, the authors are confident that you have a surprisingly simple and effective solution set within reach. Moreover, because the approach will leverage the centralized program you already have in place, you can accomplish a fundamental re-tooling of your organization's ability to maximize talent and minimize risk.

## The Future of Talent in the New Project Economy

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Before the recession, independent contractors were already the fastest growing segment of the United States workforce. The 2005 contingent workforce study from the Bureau of Labor Statistics<sup>1</sup> counted independent contractors at 10.3 million and growing. At the time, analysts attributed the big talent shift from “permanent” to contingent as part of a larger movement toward a “Project Economy,” a trend bolstered by globalization, technology, and demographic shifts.

Add to this changing workforce landscape the worst recession since the Great Depression – with mass layoffs, high unemployment, and the imperative for increased agility and competitiveness – and it is clear that

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*Workforce pundits are now predicting that 50% of jobs created during this economic recovery will be contract based.*

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this process of change has been kicked into overdrive. As organizations look to Just-In-Time models for talent management, attempt to call retirees back into project work assignments, or seek to engage talented digital nomads from the millennial generation who prefer to skip from project to project, the rise of the independent contractor is here. Workforce pundits are now predicting that 50% of jobs created during this economic recovery will be contract-based.<sup>2</sup>

Increasingly, highly skilled contract talent (including independent contractors, statement of work consultants, and freelancers) is a strategically critical element in talent management and an enduring component of the enterprise workforce. Contract talent is finding its way into every level of the organization, including specialized skill areas, upper management, and even interim executives: according to Jon Osborne, VP of Research at Staffing Industry Analysts, the market for contract-based management jobs will grow 90% over the next decade, to \$26.6 billion.<sup>3</sup> From the perspective of the worker, the independent contractor lifestyle is

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<sup>1</sup> The most recent year the contingent workers and alternative work arrangements study was performed. Bureau of Labor Statistics. “Contingent and Alternative Employment Arrangements.” February 2005. <http://www.bls.gov/news.release/pdf/conemp.pdf>

<sup>2</sup> Littler Mendelson. “The Emerging New Workforce.” April 2009. <http://www.littler.com/PressPublications/Documents/Littler%20Report/Littler%20Report%20The%20Emerging%20New%20Workforce.pdf>

<sup>3</sup> Fortune. “How to Become an Exec-for-Rent.” March 15, 2010. [http://money.cnn.com/2010/03/15/news/economy/executives\\_temps.fortune/](http://money.cnn.com/2010/03/15/news/economy/executives_temps.fortune/)

often a preferred mode of operating; less than one in ten independent contractors would prefer a traditional job.<sup>4</sup>

The writing is on the wall: enterprises that expect to stay competitive must learn to effectively harness the talent energy of the rising independent workforce.

But what about independent contractor risk?

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<sup>4</sup> See BLS Feb 2005 in note 1.

## Risk: A Firestorm of Compliance Raining Down on Independent Contractor Classification

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Everything you know about independent contractor risk is about to change. What some are calling a “perfect storm” of compliance is brewing right now with changes already taking effect around the country.

Executives responsible for contract talent in the organization – whether from Procurement, Human Resources, Legal, or a dedicated Contingent Workforce Program Office – are generally familiar with the fundamentals of classifying workers as either independent contractors or employees. After all, the federal laws regarding worker classification for tax purposes has remained essentially unchanged for the last 75 years. But a new climate is emerging before our eyes, and a lot of the conventional wisdom can no longer be relied upon.

A thorough treatment of the risks and compliance environment surrounding independent contractor classification would require more depth than we can do justice to here; rather, let us focus on new developments to watch:

### Misclassification Legislation in Congress

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Two bills with catchy acronyms<sup>5</sup> are currently being considered in Congress that would fundamentally shift the landscape of independent contractor classification. The Taxpayer Responsibility, Accountability, and Consistency Act (TRACA or “TRAC Act” for short) would effectively do away with Section 530 of the Revenue Act of 1978 (Safe Harbor) as we know it, and also increase penalties for misclassification. The Employee Misclassification Prevention Act (EMPA) would effectively criminalize the misclassification of employees, increase penalties, and impose stringent reporting, recordkeeping, and notification requirements on all

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*The proposed legislation will pierce the corporate veil of corporations, partnerships and LLCs owned in whole or part by the worker and used to avoid the issuance of Form 1099s.*

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<sup>5</sup> Anecdotally speaking, Congressional bills generally don’t attain the status of being referred to by their acronyms until they have reached some measure of feasibility, familiarity, and maturity. Case in point, similar bills to both of the ones noted here have been referred to committee in previous sessions of Congress without having rated general acronym usage. This is a completely non-scientific observation.

classification decisions. In addition, according to the employment law attorneys at Pepper Hamilton LLP, “The proposed legislation also seeks to pierce the corporate veil of corporations, partnerships and LLCs owned in whole or part by the worker and used to avoid the issuance of Form 1099s.”<sup>6</sup>

## The New Healthcare Legislation

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The impacts of the new healthcare laws will not be fully understood for some time, and could in some respects be subject to change before they take effect. But some provisions of great concern are approaching rapidly, including a newly highlighted 1099 reporting provision slated to take effect on January 1, 2012 that would, like the proposed EMPA bill, “pierce the corporate veil” of hidden independent contractor vendors and require immediate discovery and control over challenging spend categories. According to Michael Tanner, a senior fellow of the CATO Institute:

The latest surprise is Section 9006(b)(1) . . . which requires that businesses provide a 1099 form to every vendor with whom they do more than \$600 worth of business over the course of a year. . . Of course businesses already have to file 1099s for outlays on items like consultants. But the new rule will mean that even the smallest of businesses will have to issue a form — and file with the IRS — for virtually every purchase or payment. Consider how many business transactions go on every single day in a \$14 trillion U.S. economy. Millions, perhaps hundreds of millions, of forms will be winging their way between businesses and between businesses and the IRS. The potential for mistakes and lost forms would be tremendous. And with errors would come audits and penalties.<sup>7</sup>

## States Passing Their Own Legislation

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The latest trend in independent contractor compliance is that states are taking matters into their own hands. With unemployment insurance funds bankrupted by extended unemployment and state coffers stressed, the states are motivated to pursue the missing revenue attributed to misclassification. At least half the states -- Nebraska, Connecticut, New Hampshire, New York, Maine, Indiana, California, Oklahoma, Vermont, Iowa, and many others—are aggressively pursuing potential misclassification, increasing penalties, and/or setting up whistleblower reporting sites and inter-agency task forces.

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<sup>6</sup> Reibstein, Richard et alii. Pepper Hamilton, LLP. “Independent Contractor Misclassification: How Companies Can Minimize the Risks.” April 2010. [http://www.pepperlaw.com/publications\\_article.aspx?ArticleKey=1769](http://www.pepperlaw.com/publications_article.aspx?ArticleKey=1769)

<sup>7</sup> Tanner, Michael. CATO Institute. “Health Bill Floods Business In Paper.” May 6, 2010. <http://www.ajc.com/opinion/health-bill-floods-business-521926.html?tag=content:selector-perfector>

## The Proposed 2011 Budget for DOL and IRS

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The Obama administration's proposed 2011 budget would allocate \$25 million to the DOL to fund a joint IRS - DOL worker misclassification enforcement initiative. Perhaps even more significantly, the budget proposes \$8 billion for the IRS to overhaul its computer systems in order to address "critical areas of noncompliance" (interpreted to mean the problem of worker misclassification).

## A Tidal Wave of Wage and Hour Class Action Lawsuits

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According to Littler Mendelson, there were 5,786 class action lawsuits for wage and hour violations filed in 2009, a 40% increase over the prior year and representing over 80% of all class actions.<sup>8</sup> As Workforce.org reported a few years ago in spotting the trend,

"The ease with which plaintiffs' attorneys can certify a class or collective action under the federal Fair Labor Standards Act, coupled with worker-friendly state statutes and a lack of accurate time recording and reporting by employers, has resulted in an explosion of class-action overtime lawsuits around the United States in the past several years, labor attorneys say. Allegations of misclassifying employees as exempt from overtime and not paying for off-the-clock work hours continues *[sic]* to result in multimillion-dollar settlements and verdicts against employers."<sup>9</sup>

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## Irresistible Opposing Forces

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Independent contractor related risks were already a tangled affair, but 2010 has seen an incredible reaction on the part of courts, governments, and regulators to trying to enforce the status quo, even as the recession and the new economy spur on a trend toward a more flexible workforce.

This combination of factors—the increased need to use contractors, but an aggressive attack on businesses trying to use them—is a leading challenge for contract talent program managers. Can the centralized contingent workforce program help to capture and manage this rapidly growing segment of the workforce?

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<sup>8</sup> Mathiason, Garry. Littler Mendelson. "Legal Risks, Healthcare Reform, and Your Contingent Workforce." Presented at SIA Risk Forum on May 11, 2010.

<sup>9</sup> Roberts, Sally. Workforce Magazine. "Time Is Big Bucks, Class-Action Wage Lawsuits Show." <http://www.workforce.com/section/00/article/25/28/07.html>

## Why “Best Practices” CWM Programs Fail To Effectively Engage Independent Contractors

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The introduction of Managed Service Provider (MSP) and Vendor Management System (VMS) approaches into Contingent Workforce Management (CWM) programs has been driven by the need to control the costs and improve the visibility of contract talent.<sup>10</sup> Largely, these initiatives have been proven with significant success in segments of the contract workforce channeled through supplier tiers. In particular, VMS users have achieved 37% better cost savings than non-VMS users.<sup>11</sup>

This powerful approach typically has a blind spot when it comes to independent contractors and statement of work (SOW) consultants. It is a problem of both scale and structure. These “companies of one” do not readily fit the traditional process. According to Chris Dwyer of the Aberdeen Group, from their most recent study of contingent labor issues,<sup>12</sup>

“Enterprises are ignoring a critical area of spend within contingent labor management: independent contractors. Independent contractors have historically escaped the strict eye of contingent labor program-runners, opening the door for a variety of legal, tax, health and financial risks. **Only 26% of independent contractor spend is currently tracked through the average enterprise’s contingent labor management program.** Enterprises that do not properly capture this inner-area of spend cannot drive compliance to federal, regulatory, and state policies concerning independent contractors due to the lack of appropriate classifications.”

Even among businesses with “Best-in-Class” centralized contingent workforce management programs, utilizing MSP and VMS approaches appropriate for that business, a mere 61%<sup>13</sup> report confidence that their

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<sup>10</sup> Dwyer, Christopher. Aberdeen Group. [Best In Class Contingent Labor Strategies for 2010 and Beyond](http://www.mbopartners.com/components/CMS/files/Aberdeen%20Contract%20Labor%20Fall%202009%20Research.pdf). Fall 2009. <http://www.mbopartners.com/components/CMS/files/Aberdeen%20Contract%20Labor%20Fall%202009%20Research.pdf>

<sup>11</sup> Ibid.

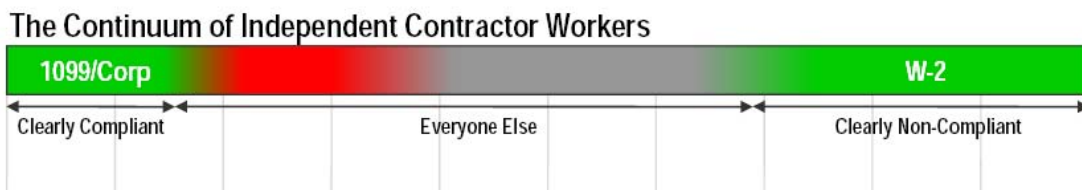
<sup>12</sup> Ibid., emphasis added.

<sup>13</sup> Aberdeen Group. Contract Labor Benchmark Report: [Contract Labor Management: Superior Workforce Strategies for a Demanding Environment](http://www.mbopartners.com/components/CMS/files/Aberdeen%20Contract%20Labor%202009.PDF). Spring 2009. <http://www.mbopartners.com/components/CMS/files/Aberdeen%20Contract%20Labor%202009.PDF>

independent contractor engagements are compliant with state and federal regulations, and this figure likely includes a measure of optimism. Businesses without a centralized process in place are estimated to be even worse off. In an era of unprecedented visibility and control over contract talent, how can this still be the case? Why is it that even targeted independent contractor compliance programs, designed to capture maverick spend and control the risks of engaging independent contractors, still fall short?

*Even among Best-in-Class contingent workforce management programs using MSP and VMS approaches, only 61% of program managers have confidence that their independent contractor engagements are compliant.*

To understand why conventional attempts to wrangle independent contractors so often fail to deliver the hoped-for results, it is helpful to explore the typical compliance profile of any independent contractor population, and then review how the proposed solution attempts to engage those contractors.



The figure above represents the typical profile of independent contractors engaged through a centralized contract workforce program. On the far left extreme dwells the clearly compliant independent contractor. In the hypothetical engagement under review, the individual is legitimately operating a business of their own, will typically have multiple clients, holds the requisite business insurances, and performs the work in such a way that an employer-employee relationship is not present. [Note: Keep in mind that compliance is not static; some of the factors that determine classification are in the hands of the worker, and some of the factors are under the businesses control; compliance can change with a change in circumstances or scope of work.] We estimate here that 20% of independent contractors referred to compliance review will typically pass as legitimate and compliant independent contractors.

On the opposite end of the spectrum, to the right, are those individuals who are clearly non-compliant with respect to the proposed work engagement. The factors of control and the economic realities all point to an employee-employer relationship, and indeed, the individual may not even think of themselves as a business or independent contractor, but are "employee minded." For this example, 30% of the putative independent contractors evaluated are clearly non-compliant and will need to be payrollled on a W-2 basis.

In the center of the spectrum, representing 50% or sometimes more of the independent contractors to be engaged, is what we'll call the "Grey Zone." Neither clearly compliant as a business vendor, nor an employee-minded individual fit for W-2 payrolling, the individual in the Grey Zone may think of themselves as independent and meet many or most of the criteria for an independent contractor. They may have previously worked as a contractor, may have their own business, and often have business expenses associated with maintaining their practice. In spite of these factors, either due to missing components (such as business insurance) or due to conditions of the project (management relationship, control over how the work is performed, using the equipment belonging to the business, and so on), this engagement cannot be vetted with the person paid as a compliant independent contractor vendor.

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*While the rubric of two engagement models for independent contractors sounds logically reasonable, and looks great on paper, real life is not so reasonable.*

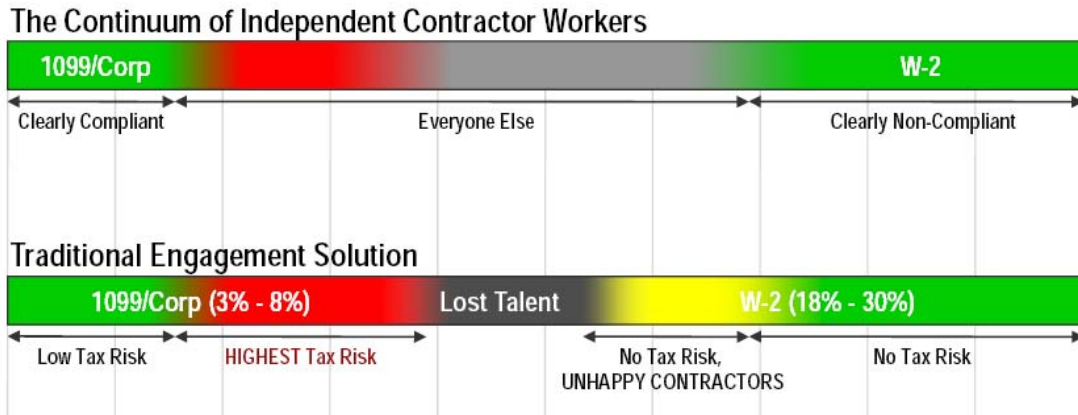
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A standard independent contractor compliance program offers two tools for engaging independent contractors once a worker status classification determination has been performed. Individuals deemed to be compliant are vetted as compliant vendors and paid on Corp-to-Corp or 1099 basis, and typically a best practices program will have some measure to re-assess compliance, either at some time interval (annually) or when work conditions shift (with every new statement of work or assignment). Additionally, a third party intermediary can operate as a so-called Agent of Record (AOR), aggregating and consolidating this compliant vendor with the others in order to channel them into the centralized contingent workforce management program.

Individuals that cannot be judged as compliant, must by necessity be payrolled as a W-2 employee, either by the hiring organization or, more commonly in a compliance program scenario, through a staffing firm or payrolling firm that will act as the Employer of Record (EOR) for that individual.

While the rubric of two engagement models for independent contractors sounds completely reasonable, and looks great on paper – this approach seems to neatly sort compliant from non-compliant, and then offer the appropriate engagement method once compliance has been assessed – real life is not so reasonable.

As we recall from the spectrum of compliance, as many as 50% of workers in a typical situation will fall somewhere in the middle. The two engagement tools must be "expanded" to accommodate all the workers referred through the compliance program. What happens next as those engagement models get expanded takes one of three routes, illustrated in the second bar below:



1. Individuals who fail compliance but resent being payrolled as a W-2 via an EOR proceed with the work arrangement, but are generally unhappy with their situation (represented in yellow).
2. Individuals who cannot pass compliance but perceive themselves as business owners, not “temps,” refuse payrolling and walk away from the engagement, resulting in lost talent (represented in grey).
3. The bar is lowered, and borderline cases, or even obviously non-compliant contractors, are accepted in as 1099s or Corp-to-Corp vendors (represented in red). Often, contractors will be told to incorporate due to the prevailing yet inaccurate<sup>14</sup> belief that this will substantially reduce the reclassification and co-employment risks, or the non-compliant individual will be sub-contracted under one or more vendor tiers in an effort to distance the risk.

A fourth response exists also, where the business will allow the individual to work on a contract completely outside the managed program, resulting in maverick spend. This is common and especially so with directly sourced talent that was not acquired through the contingent workforce supply chain.

An independent contractor compliance program with only these two worker engagement models – AOR and EOR – results in a host of systemic issues generally including:

- Low program adoption and persistent maverick spend, as hiring managers circumvent the program to maintain critical business needs.
- Hidden risk as borderline cases are rubber stamped, exceptions are made, or non-compliant vendors are pushed under supplier tiers.
- Resentful contractors that have been forced into a traditional payrolling scenario where they are unable to account for their business expenses or carry on the development of their consulting practice.

<sup>14</sup> Rumbaugh, Eric. Michael Best & Friedrich, LLP. January 7, 2010. “Incorporation Not A Substantive Factor in Determining Worker Status.” <http://www.michaelbest.com/pubs/pubDetailMB.aspx?xpST=PubDetail&pub=2426>

- Low visibility and reduced talent access, as even directly sourced talent must be sent out for compliance and engagement.
- Cost inflation, as individuals are folded into vendor tiers with layers of mark-ups, or are lumped into a payrolling program that adds W-2 markups (17-30%) to independent contractor bill rates.
- Talent loss, as recruiters fail to bring in the most mission critical and sensitive talent requirements when an acceptable engagement model cannot be entered into.

Conventional strategies for addressing these problems generally treat the symptoms and fail to understand and cure the cause. The state of affairs today is that even “Best-in-Class” contract talent management programs with incredible results across a number of metrics are still consistently failing to effectively capture independent contractors.

How can we close the gap? By going into the Grey Zone, and solving the root cause of independent contractor engagement issues.

## Innovation in Independent Contractor Engagement Delivers Proven Results

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In any initiative, it is best to start with the known objectives. An ideal independent contractor compliance and engagement program is one that:

- Maintains the integrity of the centralized contingent workforce management process that has been selected
- Enables the organization to quickly engage and leverage the absolute best available talent regardless of their initial compliance assessment results
- Provides the proper tools to achieve (and maintain over time) virtually perfect compliance and visibility
- Prevents the addition of unnecessary cost layers and short circuits perverse incentives to “hide” contractors, and
- Minimizes talent loss and failed recruiting while yielding a satisfied workforce

As we’ve seen in the previous section, most of the trouble begins in the Grey Zone, and the inability for the two commonly available engagement models (AOR and EOR) to fit those individuals.

A third engagement model – the Portable Employer of Record (PER) service offered by MBO Partners – provides an effective vehicle for compliantly engaging professional independent contractors who are not “employee minded” and suitable for typical payrolling, but also cannot meet the increasingly strict criteria to be paid Corp-to-Corp or as a 1099.

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*The PER solution is analogous to the independent contractor setting up their own compliant corporation and paying themselves on a W-2 basis with reasonable compensation and applicable taxes withheld.*

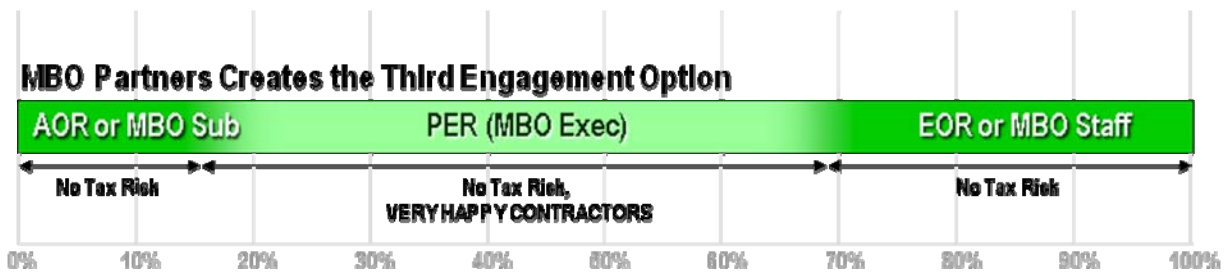
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In this engagement mode, the PER model allows independent contractors to operate as de facto small businesses free to offer their services to other clients, process their business expenses, and maintain the control and prestige of operating independently. The solution is analogous

to the individual setting up their own corporation and paying themselves on a W-2 basis with reasonable compensation and all applicable taxes withheld. Through the MBO Partners infrastructure, the individual can open a “division of one” with their own P&L that allows them to bill multiple clients or go from project to project, while taking advantage of the large company perks of professional financial administration, invoicing, collections, expense management, and group benefits programs. Personal, VIP support – “white glove” treatment – accompanies the service to ensure high-touch satisfaction for even the most specialized, high end talent such as retirees and interim executives.

Meanwhile, the individual is engaged in a fully compliant way with respect to the assorted reclassification risks. Taxes are fully paid and all of the independent workers are covered by an umbrella of appropriate insurances including worker’s compensation. Common audit triggers such as unemployment claims and worker’s compensation claims are taken care of. Blue chip benefits programs, including a tax advantages retirement savings account superior in many ways to the kind of SEP IRA an independent contractor might set up on their own, means that workers have access to comparable benefits.

The end result of this program means that individuals appropriate for payrolling via the EOR approach or sub-contracting via the AOR approach can still be engaged in that manner (either via MBO Partners or through another preferred channel, according to the needs and preferences of the program managers). There is simply an additional engagement option for the individuals who previously represented the Grey Zone.



The third option virtually eliminates the exceptional cases that previously wreaked havoc on the integrity of the centralized program.

While this approach is extraordinarily effective on its own (without need for a VMS or MSP program necessarily), outstanding compliance, visibility, and control are possible when a best-in-class independent contractor engagement and compliance program is combined and integrated into the existing process. Fortunately, the very nature of the PER solution aggregates and organizes the independent contractor talent base, allowing them to be channeled into the VMS and/or MSP program—all without the need for heavy payrolling markups or unnecessary intermediate vendor supply tiers.

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*Experience has proven the PER solution to act as an efficient “universal adaptor” that allows thousands of businesses-of-one to plug in to the vendor management program, quickly and compliantly.*

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Experience has proven the PER solution to act as an efficient “universal adaptor” that allows thousands of businesses-of-one to plug in to the vendor management or services spend management program, quickly and compliantly. According to Chris Dwyer<sup>15</sup>, a study of over 300 enterprise contract labor programs discovered that:

"Organizations using MBO Partners are able to capture 11% more contingent labor spend inside their program than organizations not using MBO Partners, according to the research performed for the Aberdeen 2009 Contract Labor Study. They are also driving an independent contractor compliance rate that is 30% higher than the average enterprise."

Without a doubt, the PER engagement model for “Grey Zone” independent contractors, combined with a Best-in-Class VMS program, has the potential to deliver unprecedented results in compliance, control, and cost savings.

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<sup>15</sup> Dwyer, Chris. Aberdeen Group. Quoted in March 17, 2009 press release. <http://www.prweb.com/releases/staffing/industry/prweb2239974.htm>

## The New Best Practices for Effective Implementation

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New models for independent contractor engagement and compliance means there are new best practices to consider, so prepare to adjust your assumptions. The good news: the road to a smooth implementation has already been paved, and when you already have a VMS system in place, making an orderly transition doesn't have to be expensive or disruptive to your business operations. In fact, there is a clear business case and return on investment (ROI) model for the program structure described in this paper, already documented by research published just last year from the Human Capital Institute's Contract Talent Research Practice Area:

A relatively small percentage (16 percent) of our respondents use Independent Contractor Engagement Services (ICES) or similar services such as a PER (Figure 16). However, among the users of ICES and/or PER services who track cost savings, almost half (48 percent) have experienced significant cost savings (greater than 15 percent) — a significantly higher percentage than for either MSP or VMS (Figure 16).

Moreover, among the small subset of organizations that use VMS, MSP and ICES (22), a full 55 percent report savings of better than 15 percent from their ICES/PER relationship.<sup>16</sup>

When documenting your ROI and preparing the business case for organizational change, be sure and consider:

- Hard dollar savings on rates.
- Increased efficiency and significantly reduced administration of paying small vendors outside the program.
- Savings from the removal of "rate padding" by disintermediation of the services supply chain.
- A reduced need to engage de facto independent contractors through high rate payrolling means.

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<sup>16</sup> From May through August 2009, HCI conducted extensive research to understand whether organizations are realizing a return on their investment (ROI) in centralized contingent and contract talent management, and if so, how. The surprising findings are summarized in this paper. Human Capital Institute. "The ROI of Centralized Contract Talent Management." September 2009. <http://www.mbopartners.com/components/CMS/files/ContractTalent09MBO.pdf>

- Removal of risk and the potentially devastating costs.
- Improved recruiting efficiency, a lower rate of lost talent, and new abilities to leverage internal recruiting resources to self-source talent.

Rounding up maverick independent contractor spend can be an enormous task at the enterprise level, and great care should be taken when developing and implementing a new compliance program.

While every enterprise needs a customized approach, here are eight key considerations:

1. Create a new, clean process to deal with all new engagements first, before approaching legacy spend.
2. Once your new contract talent program is clear to hiring managers throughout your organization and is flowing smoothly, you can begin to approach incumbent independent contractors.
3. Be open to expert consultation that will help your organization discover, segment, and properly take care of hidden independent contractor populations.
4. Prioritize your biggest risk exposures first, and then work your way back at an even pace.
5. Once you have addressed the 1099s, consider small statement of work (SOW) vendors and project services spend that may be a fit for the program.
6. Collaborate with HR's off-boarding programs to identify high-potential talent that may be re-engaged. Specifically, the business case to register retirees into an easy to deploy independent contractor talent pool for special projects is extremely compelling once you have this model in place.
7. Look to gain closer control over talent and end the culture of hiding small vendors under the sub-tiers.
8. Build it "Future Proof." Prepare for upcoming requirements, such as the new 1099 reporting that will take effect in 2012, to ensure your program won't be obsolete by the time it is rolled out.

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In addition to these eight program considerations, attend to the question of cost and the effect it may have on your independent contractor populations. Typically, we advise that the program can be fully or partially supplier funded for any new engagements. For a smooth and easy legacy program, experts suggest uplifting bill rates on incumbent independent contractors, at least until there is a new rate negotiation or statement of work. While the program is designed to be minimally impactful on independent contractors – and indeed, many individuals will find this new engagement method to be favorable for their business – visible rate changes can create friction at implementation that exceeds the cost of the uplift.

Whatever program structure you select to handle your independent contractor engagement and compliance process needs, get ahead of the issue now. Enterprise programs can take time and care to implement in a way that minimizes business impacts. If you wait until there is a problem – such as a lawsuit or an audit – it can be hard to try to fix everything and get your arms around every risk element overnight.

Integrating this proven independent contractor engagement approach into your centralized contract talent management program is an effective strategy to manage risk and get better visibility and control over mission critical talent. You'll also be aligning your organization to prepare for upcoming changes to independent contractor compliance and 1099 reporting.

This paper cannot approach the level of detailed treatment that any true enterprise contract talent program will require to make an informed evaluation. One place to start is a Risk Profile Assessment, or RPA. This process can give your organization an initial snapshot of your independent contractor risk – analyzing your current engagement processes, services suppliers, and contracts – and indicate possible process improvements and independent contractor engagement and compliance tie-ins with your existing Contingent Workforce Management (CWM) program. While a full RPA usually takes three to four weeks (depending on program size and complexity), a focused onsite one-day risk briefing and preliminary program review can be revealing.

For further resources or to schedule a customized consultation or Risk Profile Assessment, please contact the authors with your request for information.

## About MBO Partners

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MBO Partners makes it easy for independent contractors and their clients to work together. With their proprietary MyBizOffice® system, MBO Partners is the leading alternative to self-incorporation for consultants, freelancers, 1099s, and independent contractors. For businesses that use contingent labor or contract talent, MBO Partners is an Independent Contractor Engagement Specialist (ICES) providing independent contractor payrolling, 1099 risk mitigation, alumni and retiree programs, and independent contractor compliance solutions.

[www.mbopartners.com](http://www.mbopartners.com)

*To learn more about capturing independent contractor spend through your enterprise CWM program with the MBO Partners solution, contact your account manager or call:*

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