

Guidelines for Hiring

IN THE GIG ECONOMY



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Overview



You're posting a role on the Mom Project marketplace, and you're about to engage with some incredibly talented women and men who are looking for companies like yours who get it. You see the potential for the tech-enabled, gig economy, and want to engage with this workforce, but may have some questions.

Not to worry, we've created this resource guide to help you get started and answer some questions you may have.

As the hiring company, the way a worker is classified is ultimately your call. There is no cut and dry test to determine if someone is a contractor or an employee under applicable federal and state laws. Not to worry, we're here to help.

This resource guide is not a legal document nor is the guidance provided intended to be misconstrued as legal advice. Nothing in this resource guide or The Mom Project's Terms of Service Agreement shall be construed to create any association, partnership, joint venture, employee or agency relationship between the Company and The Mom Project or Talent and The Mom Project.

FAQ

Q: What is worker classification and why is it important?

A: Worker classification is the determination of whether a person you engage to provide services is an employee or independent contractor (IC).

It is important because this classification has several tax and benefit consequences. For example, a company is generally not responsible for any tax payments or withholdings that would be associated with employment. Further, a company would generally not provide company sponsored benefits to an IC.

However, if it is determined that an IC was misclassified and should have been classified as an employee, your company could be liable for unpaid taxes, fines for wage & hour violations, benefits claims and more.

Q: What are the two worker classifications?

A: The two main worker classifications are independent contractor and employee. In general, here's how each can be defined:

Independent contractor: A person is an independent contractor if they perform services maintaining control over when and how work will be completed to provide an ultimate deliverable. The company, can detail the ultimate deliverable or finished product but not much else.

Employee: A person is an employee if they perform services for you and you can control what work will be done and how it will be done. Control includes requiring them to work at a specific place and/or during specific hours, or providing them with training and ongoing evaluation. Employees are generally integrated into the core functions of your organization.

Q: What agencies determine worker classification?

A: At the federal level, the IRS could review a classification of a worker. Here is a link to the [IRS' page on Independent Contractors & Employees](#).

In addition, several agencies at the state level may make a determination on worker classification (and potentially levy fines). The specific requirements for an IC differ between the states. A good place to start for more information about a specific state's IC requirements is the department of labor's website for the state where the worker is located. Please note that some states have stricter rules about worker classification than the IRS.

FAQ

Q: How do I determine the classification of a worker?

A: Determining worker classification can be nuanced. Most tests are not cut and dry. Instead they are a balancing of several factors. A major factor to consider is control.

On the IRS' [page on Independent Contractors & Employees](#) they note three types of factors to consider with worker classification:

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how a worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Some other indicators of ICs

- ICs operate like an independent business (because they are operating an independent business).
- Do specialized work that is not part of your primary business.
- Work for a discrete time or on a project basis.
- Negotiates their rates
- Doesn't need a lot of training
- Can delegate someone else to do the work
- Holds their services out to the public (i.e. other businesses).
- Does not need you to provide central supplies or equipment to perform the services
- Has latitude in setting her own schedule
- Is not providing services to one company for an extended period of time

Some examples of ICs to think about could be lawyers, plumbers, cake makers and accountants. You may tell those types of professionals the ultimate outcome you want, but you probably wouldn't have to provide their equipment, train them how to provide the services, control all of the times they were providing services, and integrate them into your company.

Beware of the ABC's

Certain states, such as California apply what is known as the ABC Test for worker classification.

California's Labor & Workforce page provides the following:

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business; and
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

Please note, several states apply the ABC test, with more states adopting it each year.

FAQ

Q: Are there any things I should do or not do when engaging with an independent contractor?

A: Things to do

Make sure the IC works independently (or with members of her own agency and/or subcontractors), and generally speaking with tools she provides; she can factor in the cost of tools when negotiating a fee for the services provided.

Things to avoid

You generally don't want to take any actions that would integrate the IC into the functions of your business. These could include: providing tools and training; specifying the way and the time the IC works; scheduling frequent meetings with you and/or your team and the IC; not allowing the IC to work for other clients and/or delegate work as she sees fit. Lastly, you don't want to think that the existence of an independent contractor agreement solves the classification question. It is good practice to have the project detailed in writing in an agreement. However, if any agency were ever to look at the engagement for a possible misclassification, they would give much more weight to all of the factors detailed above than any one writing.

FAQ

OK, Great! You've thought through all the considerations and have determined classification. So what does this all mean for your new project on the Mom Project?

1) If the talent is an independent contractor:

We have a template independent contractor agreement to assist you when contracting with the talent. In addition, we provide third-party payment processing services to ensure your contractor gets paid accurately and timely and to take that burden off of you. As the third-party payment processor we will also file any 1099 forms required by the IRS.

2) If the talent is an employee, that's great too! We support this type of work as well. One big question: Is the role an ongoing need, a project, or possibly a project that could develop into a direct hire role?

- a. If it is an ongoing need: You may want to consider a direct hire role rather than a contractor role. Please work with your Account Executive to make sure you understand and approve our terms and fees related to a direct hire.
 - b. If it is a project: The Mom Project provides Employer of Record (EOR) services. Your worker will officially be employed by the Mom Project's third party partner EOR who will take care of all of the administrative elements of employment such as pay, tax withholding, benefits etc, but the worker will provide services to you. You get the role you need filled without the administrative tasks of directly employing the worker. As this service includes additional payrolling and tax liability costs, this service comes at a 20% markup which is a straight pass through cost from Mom Project. We are happy to provide a breakdown of these pass through costs.
 - c. If it is a project that could turn into a direct hire: You could start with our EOR services. When you are ready to extend an offer directly with your company, you could transition from the EOR services. There would be a conversion fee associated with this transition. Our Customer Success Team will work with you to ensure the appropriate fee is applied, taking into consideration the fees paid to Mom Project for the hours worked during the project phase.
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FAQ

Additional Resources

We hope this was helpful. Below are some other great resources for you to review when deciding if an independent contractor engagement is right for you.

Mom Project Terms of Service:

https://themomproject.com/terms_of_service/

Inuit Quickbooks contractor/employee calculator:

<https://quickbooks.intuit.com/r/1099-w2-employee-calculator/>

Square, Inc. overview:

<https://squareup.com/townsquare/1099-vs-w2-which-do-you-want>

IRS:

<https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation>

You may want to look at the department of labor's webpage for the state where your worker resides as well.