



# Independent contractor or employee?

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Avoid misclassification and protect your organization from risk



# Evaluate the risk of hiring independent contractors and learn how to **protect your organization**

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## Your independent contractors could be putting you at risk

Due to intense competition for talent, the need to expand and quickly fill jobs, or a desire for increased innovation, more organizations are hiring independent contractors working remotely from lower-cost and talent-rich regions abroad.<sup>1</sup>

But depending on an independent contractor's scope of work, employment laws in their home country might consider them an employee entitled to benefits. Everything from pay to exclusivity is weighed when deciding upon the correct worker classification, and misclassifying an employee as an independent contractor carries significant risks for your organization—such as severe financial penalties, potential legal consequences, or even the forced closure of your business. Different countries have different rules and if you don't have the working knowledge of local requirements, you can't be sure you're in compliance.

Knowing the difference between what classifies a worker as an independent contractor vs. an employee is the first step to eliminating that risk.

<sup>1</sup> <https://www.reworked.co/the-wire/the-rising-global-trend-of-independent-contractors-and-the-importance-of-compliance-with-employment-law/>

# What is an independent contractor?

An independent contractor is a skilled individual or professional an organization hires for a specific project or to fulfill a particular area of expertise. Independent contractors often work with multiple organizations simultaneously and are typically responsible for managing their own taxes.

Here's a brief overview of what differentiates an independent contractor from an employee in the eyes of the law. The definition changes from country to country, so to determine if you've misclassified someone, you must understand the legal requirements wherever your independent contractor is based.

## WORK

### INTERNATIONAL CONTRACTORS

Work is temporary and not an integral part of business operations

### EMPLOYEES

Work is a key aspect of business operations

## MANAGEMENT OVERSIGHT

### INTERNATIONAL CONTRACTORS

Only the result of work is managed, not what work is done or how it's done

### EMPLOYEES

Day-to-day work is managed by the employer

## SERVICE LOYALTY

### INTERNATIONAL CONTRACTORS

Service is often provided to multiple clients

### EMPLOYEES

Service is provided to one company for an extended period of time

## EXPENSES

### INTERNATIONAL CONTRACTORS

Responsible for work expenses and may not receive reimbursement from the company

### EMPLOYEES

Employer is responsible for reimbursing work expenses incurred

## TERMINATION

### INTERNATIONAL CONTRACTORS

Can often be terminated at any time, although some countries may require a brief notice period or severance payments

### EMPLOYEES

Severance pay and a termination notice are often required; regulations vary by country

## PAY

### INTERNATIONAL CONTRACTORS

Paid by project

### EMPLOYEES

Paid for time worked

## TAXES

### INTERNATIONAL CONTRACTORS

No income taxes are withheld, and contractors are responsible for self-employment tax; some countries may require payroll withholding

### EMPLOYEES

Employer must pay and withhold relevant taxes, including income, social and unemployment tax

## BENEFITS

### INTERNATIONAL CONTRACTORS

Pay for their own benefits like healthcare and retirement; some countries may require benefits like paid leave

### EMPLOYEES

Most employers pay for and provide benefits like healthcare, disability, paid leave and retirement

## RESOURCES

### INTERNATIONAL CONTRACTORS

Personal resources and tools are used to complete work

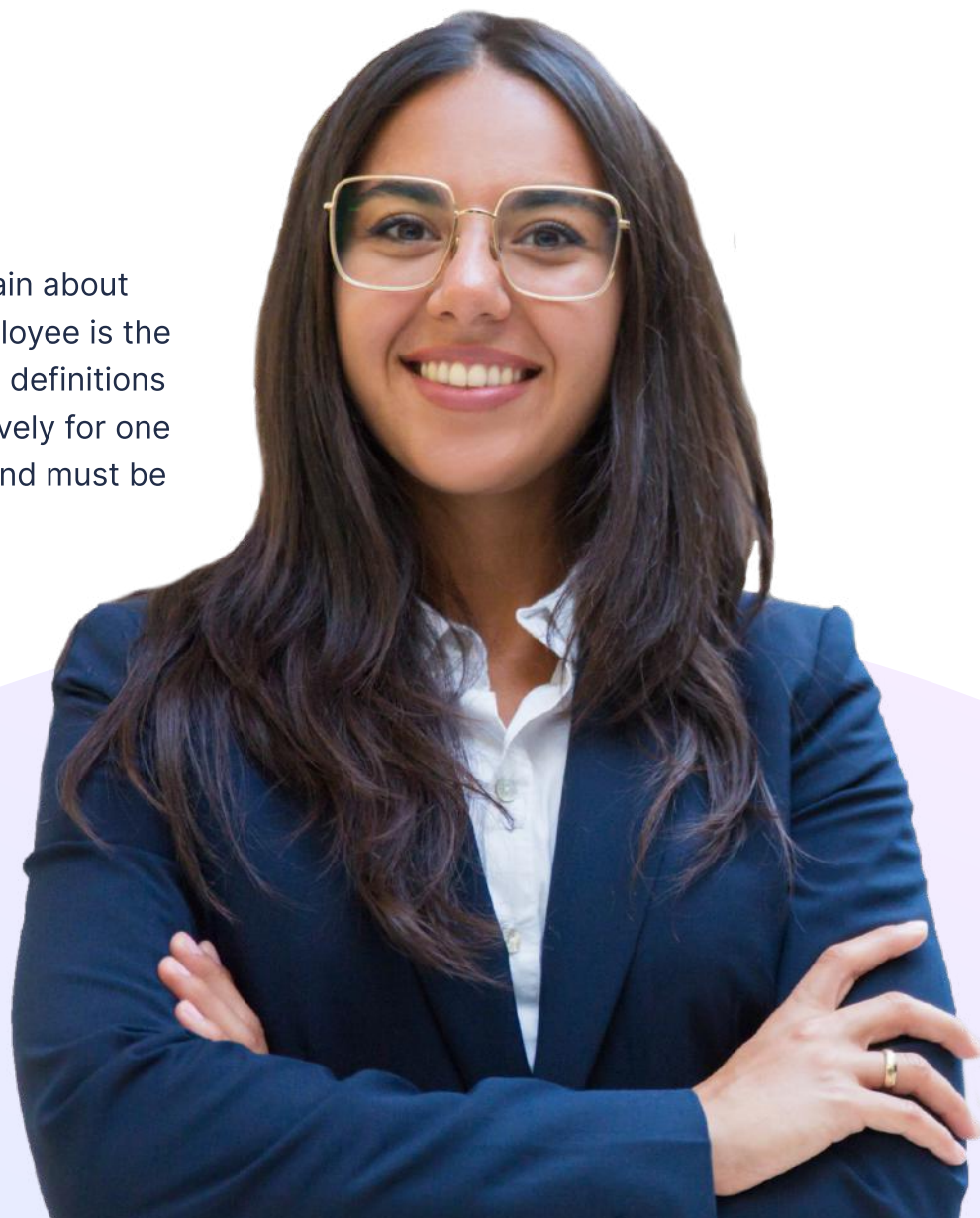
### EMPLOYEES

Company resources are used to complete work

# The better choice for your **business**

After reviewing these distinctions, you might still be uncertain about whether working with an independent contractor or an employee is the better option for your company. Setting aside differences in definitions across countries, a general rule is if someone works exclusively for one employer for an extended time, they're likely an employee and must be compensated as such, including wages and benefits.

Using independent contractors for projects can save costs in the short term, but if you use them as you would an employee, the penalties of employee misclassification can outweigh the benefits.



## Why use an international contractor?

If you have a need for a specific skill set for a project that has a clearly defined start and end date, an independent contractor could help by contributing their expertise for the project's duration. Here are some other advantages of hiring a contractor.

### Save money

By using independent contractors for specific projects, your company will only have to pay for the work they deliver, leading to cost savings on things like equipment, office space and benefits.

### More flexibility

You can bring in contractors for specialty jobs and let them go according to your business needs without being tied to stringent labor requirements like termination or leave that full-time employees require.

### Less oversight

Contractors don't need or expect a lot of oversight in their work for you. This means you can focus your time on the work that advances company objectives, not on worker management.

# Why hire an employee instead of a contractor?

## No risk of misclassification

Many workers are actually functioning as full-time employees, but are mistakenly misclassified as independent contractors, especially if the organization is not well-versed in the local country's labor laws. In some markets, it is not uncommon for contractors to claim they were actually working as an employee and report a company to the local government so they can receive back payments.

## Better copyright protection

With employees, you have control over your intellectual property (IP). However, with independent contractors, your company may not hold the copyright to the work they produce, even if it's produced specifically for you. In France, copyright protection rests exclusively with the original creator, and can't be transferred if there is no employment relationship.<sup>2</sup>

## More company loyalty

When employees work for your company, they are motivated to see it succeed because you've invested in their professional growth through training and education, and part of their compensation—bonuses, for example—could be tied to company success. So when the company does well, so does the employee.

**The bottom line is, regardless of which category of worker meets the needs of your organization, it's important to understand the local legal definitions and requirements to mitigate the risk of misclassification.**

<sup>2</sup> <https://www.lexology.com/library/detail.aspx?q=db4300b2-84aa-4a2a-acc3-e786453798ec>

# Real-life penalties

The misclassification of an employee as an independent contractor is a high-stakes error that can result in significant consequences. Here are some examples:

## AU \$93,900

Amount Australia could fine your business for misclassifying employees

[Source](#)

## \$205 MILLION

The stunning sum Uber owes after misclassifying drivers in Brazil

[Source](#)

## 23 MONTHS

Length of prison time one business owner served after misclassifying 30 construction workers in the U.S.

[Source](#)

# Balancing the benefits of foreign talent with risk protection

Converting international contractors into full-time employees can help you mitigate the related risk. In order to hire employees, or convert contractors to employee status, you must have an established legal entity in the country where you plan to employ them. Entity establishment can take months and cost a significant amount of money, and once you have an entity established, you'll need to know the ins-and-outs of local labor laws.

If you are already working with foreign independent contractors, be sure to review how your company is using them to ensure proper compliance. If you think there is the potential for legal issues and want to convert your contractors to full-time employees quickly, GEO, our employer of record (EOR) solution, offers a compliant way to keep hiring people around the world.

**With GEO from Safeguard Global, we act as the local legal employer and hire employees on your behalf, managing payroll and benefits, and keeping up with ever-changing local laws and tax requirements—so you don't have to.**

A global EOR has in-country HR and payroll experts who understand the local employment regulations, no matter how complex—including whether a contractor is putting the company at risk of employee misclassification. The EOR is responsible for ensuring that all contracts, payroll, tax withholdings and social entitlement contributions adhere fully to the local labor laws. This frees you to focus on your workers and their day-to-day responsibilities.

A global EOR is a good option for hiring when you don't have an entity, but your organization may decide that it makes sense to establish a legal presence in-country. Although establishing an in-country entity could come at a significant cost, in both time and money, if you have a sizable workforce in a country that's made up of independent contractors, there's likely a compliance risk, and that could prove to be even costlier. Having your own local entity eliminates the need for hiring independent contractors—and the risk of misclassification—because you have the ability and freedom to hire employees directly.





# Hire with GEO, our **employer of record**

## Hire

Ensure employee contracts comply with all local labor laws. Compete for top candidates, with flexible, cross-border work options and attractive benefits and salary packages.

## Onboard

We've onboarded thousands of workers in the past decade. We know what works and what doesn't. With our streamlined approach, your team can get started in as little as two weeks.

## Pay

Make sure payroll for your international workers is accurate, on time and includes all required benefits and tax withholdings.

## Support

Our in-country HR teams make sure your workers get the support they need in their home language and time zone.

# How to **convert** **contractors** with GEO

The conversion process is fairly simple. We're your partner, supporting and advising you every step of the way. Our in-country HR teams are knowledgeable about local requirements and will help you craft new compensation packages, walk your contractors through the changes and tackle revised contracts and other details. As the employer of record, GEO will handle the legal and compliance-related details, get payroll up and running, answer any of your questions and manage other behind-the-scenes logistics as needed.

**But first things first. You need to convert the contractors you're already working with. Here's how.**

1

## **Determine their new compensation and your costs**

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When you transition contractors to employee status, you'll have to meet legal minimum wage requirements or convert from a fee to a salary plus benefits. Health insurance, retirement plans and paid time off, for example, will add to your costs of employment, and you'll need to adjust their remuneration to account for them. When you partner with us, we can offer guidance on local salary requirements and expectations.

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## **Talk to your contractors**

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They'll have a lot of questions, and you'll want to reassure them that there's no financial loss for them as a result of the conversion. Some may want to retain the flexibility of working from home or setting their own hours. We've created a list of FAQs you can review together. (See page 15.)



## **Does everyone have to convert?**

The truth is, some of your independent contractors may be properly classified and aren't a compliance risk. We can review your working relationships with your contractors to help you determine which, if any, pose a risk to your business.

### **3 Hand off to Safeguard Global**

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We start with a welcome call to guide you through country-specific requirements, such as taxes, labor laws and benefits. We then work with your team to prepare an employment contract that meets both your company's needs as well as local market laws and customs.

### **4 Begin managing their work**

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If they've been working offsite, help them adjust to the new arrangement, whether it's on-site, or remote. This is especially important if you're bringing together a group of consultants to form a new team. While we will manage the HR and payroll requirements, you'll still be responsible for managing their day-to-day work.

# Bringing your contractors into the conversation

When it's time to talk with your contractors about the need to convert them to employees, don't be surprised if they're not thrilled; transitions can be confusing or stressful even under the best of circumstances. Plus, your contractors may not find all of the news welcome. There's a lot of information to convey and questions to answer. Here are some helpful tips to make your conversation go smoothly.

## Meet one-on-one

Whether you need to convert two contractors or 20, meet with each one alone. Everyone is likely to have detailed questions about compensation and benefits, and that requires privacy. If possible, their manager should meet with them face-to-face.

## Be transparent

You'll erode trust and goodwill if it feels like you're hiding something. Conversion is a legitimate business need, and there's no reason not to explain why. It's true that you're making the change to protect your company from risk, but the contractors also stand to gain with benefits and legal protections they weren't previously eligible for.

## Come prepared

There's a lot to cover, from changes in salary and how taxes are collected, to working hours and paid time off. Anticipate questions and have the answers. Our FAQs are a good conversation guide and a helpful leave-behind for your contractors. (See page 15.)

## What if they say no?

Not everyone is willing to become a full-time employee, no matter the pros and cons. Be prepared for some of your contractors to say no and decide ahead of time how you'll handle it. If they're a top performer, maybe it's worth it to negotiate until you have a package they'll accept. Or it may be that you'll lose a few people, no matter how much you negotiate.

# Topics to cover

These are the key points to think through before you meet with anyone

## Compensation

Naturally, this is the primary concern for your independent contractors since their wages will most likely decrease when they convert to employee status. Have all details for their total compensation ready, and don't forget to emphasize the upside. They'll become eligible for benefits such as bonuses, profit-sharing and retirement plans.

## Responsibilities and reporting structure

Will their responsibilities change? What about their reporting structure? Even if everything remains the same, be sure to go over it with them so that they're clear on what is different and what is not.

## Workspace and schedule

Will they continue to work offsite, at a temporary office location or somewhere else? Review business hours, new equipment such as a company-issued computer as well as anything else that will make their day-to-day different, like a flexible work schedule or telecommuting opportunities.

## Other perks

What else do you offer employees? Maybe they can take advantage of benefits like paid time off, or they'll have a company car to use. Explain what expenses are covered now that they might have previously paid for out of pocket.

# The upside of being an employee

There are a lot of advantages for contractors when they convert to employee status. In the U.S., for example, contractors can stop paying the self-employment tax, and outside of the U.S., employees gain access to in-country social benefits. For example, employees in Colombia with at least four weeks' worth of contributions to the social security system are eligible for 180 days of sick leave at two-thirds pay.<sup>3</sup>

**Healthcare benefits**

**Paid time off**

**Life insurance**

**Workers' compensation for injuries**

**Liability insurance**

**Increased labor law protections**

**Regulations around terminating employment**

**Company-issued computer or other equipment and supplies**

**Long-term contract**

**Mandatory bonuses**

**Team-building activities and inclusion in company culture**

**Pension plan contributions**

<sup>3</sup> <https://www.safeguardglobal.com/global-reach/colombia-employer-of-record/>

# GEO, your international employment solution

We do more than eliminate the risk that comes with misclassifying an independent contractor. We also administer HR and payroll so you can focus on your company's core business and meeting your goals.

With GEO, you can hire international workers—or convert contractors to employees—quickly and compliantly without the need for an on-the-ground entity of your own. Our solution is flexible and we can handle as much or as little as you require.



## Secure top talent

Gain access to the worldwide talent pool in order to hire the best people for your needs.

## Save money

You benefit from greatly reduced setup costs, no capital requirements and no more risk of fines or penalties due to noncompliance.

## Compliant contracts

Our in-country HR experts ensure your contracts are always compliant, no matter how complex the local labor laws.

## Local support in 170+ markets

Our service includes contracts written in local languages, salaries paid in local currencies and support in your local time zone.

## One secure platform

Our secure platform lets you simplify expense management, streamline onboarding, track employee time and attendance, and gain workforce insights with GEO Analytics.

## Speed up time-to-market

When you don't have to set up an entity, you can get up and running fast in competitive markets by converting contractors in as little as two weeks.

## Unparalleled expertise

We're the original global employer of record and have been helping organizations solve their international hiring challenges for over a decade.

## Simple billing

We provide you with one invoice per country, which outlines employee salaries, social costs, commissions and service fees.

## Ongoing support

We act as your in-country HR team and provide local support to your local workers. We stay on top of every change to labor laws, compliance regulations, data privacy requirements and cultural shifts.

## Employee FAQs:

# Converting from independent contractor to employee

Your client has recently informed you that they want to convert you from a contractor to their full-time employee. Here are answers to some of the questions you might have.

### What's the reason for this change?

Labor laws differ from country to country, but in most places the regulations for classifying someone as an independent contractor are complex and confusing, and misclassification can result in expensive fines for employers. Hiring you as an employee protects you and your employer from risk and makes you eligible for a number of employment protections and other benefits.

### How will my compensation change?

In most countries, you'll convert from a project fee to an hourly wage and/or annual salary. Your employer should have these numbers ready for you to review.

### Will I still pay my own taxes and social costs?

Your employer will follow the laws in your country for deducting taxes and social costs from your paycheck. In many places, they'll pay the government directly so you don't have to. You can also stop paying self-employment taxes where applicable.

### Who is responsible for my expenses?

Ask your employer how they reimburse for expenses such as travel, per diem and other expenses.

### Am I entitled to benefits?

Your employer is now responsible for offering you benefits in accordance with local employment regulations and customs. These might include health insurance and other healthcare coverage, a company-issued computer or other equipment, paid holidays, sick days and other paid time off, bonuses, overtime, retirement plans, workers' compensation, life insurance and more.

### Will my responsibilities or workday change?

Your employer will review with you any changes to the way you perform your job, who you report to and related questions.

## Bottom line

**Your employer considers you a valuable part of the team.**

If you have any more questions about shifting from a contractor to an employee, just ask.



# What additional protections does the law afford me as an employee?

Local labor laws might dictate any of the following:

- Overtime pay
- Paid time off
- Retirement plans
- Mandatory benefits
- Workers' compensation
- Other liability insurance coverage
- Termination rights



# Your partner for compliant hiring around the globe

Our global solutions advisors can help mitigate the compliance risks associated with employing international independent contractors with GEO, our employer of record solution.

**Contact us today  
to get started**



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Safeguard Global is a future of work company that helps workers and companies thrive in the global economy. Backed by a data-rich technology platform, local expertise and industry-leading experience, Safeguard Global provides end-to-end solutions to manage people and scale operations. With Safeguard Global, organizations can recruit, hire, manage, pay and analyze anywhere in the world, no matter where they are in their growth journey.

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