



## Professional Services Resources & Tools

### PERMALANCING AND YOUR WORK FORCE



**04/28/2008 — Part freelancer, part employee, permalancers are independent workers who do full-time work on a temporary basis. Under increasing legal scrutiny, they offer employers as many potential pitfalls as they do possible perks. Protect yourself by learning the rules of independent contractor classification.**

By Matt Alderton

In 1992 and 1998, approximately 12,000 temporary workers joined in two separate lawsuits against a large multinational corporation and claimed that the company had misclassified them as independent contractors. The workers — so-called "perma-temps" — insisted that they were, in fact, full-time employees who deserved access to employee benefits programs. Before the courts could agree, the company settled both lawsuits for a total of \$97 million.

The cases made employers nationwide pause in order to analyze their work force. Ever since, the line between employee and freelancer has been irreversibly blurred, according to labor and employment attorney Seth Borden, partner at New York-based law firm Kreitzman Mortensen & Borden. Straddling it, he says, is a class of contingent workers known as "permalancers."

"'Permalancers' is used to describe a situation whereby an employer uses a worker and, rather than classifying them as a full-time employee, and fulfilling all of the legal responsibilities that come with it, seeks to differentiate them as an independent contractor," Borden explains.

When it's done properly, permalancing is an attractive arrangement that appeals equally to employer and employee. When it's executed poorly, however, both parties suffer.

#### Permalancing Pitfalls

The risks associated with permalancers are financial, as well as legal.

"You have what is in effect an independent contractor who might be working on various projects for the same employer for 60 hours a week, 52 weeks a year, for three straight years," Borden says.

In that case, when temporary work becomes permanent, the law considers workers employees — even if their employers don't. Their employers must therefore pay payroll taxes and include them in employee benefits programs, among other things.

"Anyone who is an employee must be treated as an employee," Borden says. If they aren't, the Internal Revenue Service, the U.S. Department of Labor and plaintiffs' attorneys may be entitled to collect back pay, back taxes and legal damages. "Employers who classify large sections of their work force as independent do so at their own peril, should they eventually be found to be employees."

### AT A GLANCE

#### Employee or Independent Contractor?

- In order to keep permalancers working for your company, and not against it, keep IRS guidelines top of mind.
- According to the IRS, "A general rule is that you, as employer, have the right to control or direct only the result of the work done under an independent contract and not the means and methods of accomplishing the result."
- For more information and criteria to help you classify workers, consult the [IRS](#)

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**Permalancing Perks**

Despite its thorns, permalancing has plenty of advantages, says Linda Stewart, president, CEO and founder of Epoch, a Boston-based firm that connects financial services companies with executive-level permalancers. "The biggest benefit for companies is a variable cost," she says. "When the project or assignment is over, the costs go away."

Other potential benefits, according to Stewart:

- Because they don't have to go through onboarding and orientation, permalancers can be more productive more quickly.
- Because permalancers aren't actually permanent, companies can hire top talent on a per project basis.
- Because permalancers are responsible for their own taxes and benefits, employers save money on human resources and administration.
- Because permalancers are temporary, companies can be flexible enough to expand their staff for special projects, busy seasons and client crises.

Permalancing can be great for employees, too. "The permalancers that I work with are people that have decided they no longer want to be employed by a single organization," Stewart says, adding that they enjoy the freedom, flexibility, autonomy and work-life balance that self-employment affords them. "They get to continue leveraging their skills and adding value to organizations, but they get to do it more on their own terms."

**Best Practices**

Enjoying the benefits of permalancing and avoiding the risks is as easy as following employment laws, according to Borden. "If you want to hire contingent workers, be sure you can justify that classification," he says.

"There are very strict IRS guidelines on this," Stewart says. In order to remain compliant with them, she recommends employing permalancers with one very basic rule in mind: Permalancers should only be hired for a specific project and for a specific period of time.

Still not sure if you can pass the permalancer test? Trust your gut, says HR expert Roberta Chinsky Matuson, president of Human Resource Solutions in Northampton, Mass. "Permalancing can be a great situation if it's mutually beneficial," she says. "But if you're doing it to avoid all the additional costs associated with having full-time employees, I would suggest rethinking whether it's the right way to staff your organization."

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