

CONTRACT WORKERS

Untying the Gordian Knot

In Greek mythology no one could figure out how to untangle the complex interweaving of the Gordian Knot*. The problem was solved by severing the knot with a sword slash. A simple solution to a complex problem.



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But it is, unfortunately not as simple to untie the Independent Contractor knot of the Internal Revenue Service (IRS)—although we're sure that many would like to use the simple solution of the sword!

In today's world of work we must all accomplish more with less. Mostly this means fewer people. We've automated our operations by putting a computer on every desk. We've eliminated levels of middle management and supervisory oversight. We find fewer residents in the executive suites and corner offices and more folks are occupying cubicles.

Nevertheless, after going through the downsizing, right sizing and re-engineering, most organizations still have the same amount of work—if not more—to accomplish. There aren't enough hours in the day or people in the ranks in most organizations to get the job done.



* Gordian Knot

1. An intricate knot tied by King Gordian of Phrygia and cut by Alexander the Great with his sword after hearing an oracle promise that whoever could undo it would be the next ruler of Asia. **2.** An exceedingly complicated problem or deadlock.

—The American Heritage Dictionary

So how *do* we get the job done? Using interim contract experts is a good answer. But how can we avoid crossing swords with the IRS?

Today, your organization basically looks like the concentric circles below. At the center of the organization is a core of essential, key executives and professionals who have skills and capabilities to move the company's core competencies forward. These people are supported in their efforts by outside, interim experts.

The outer circle is made up of people brought in from the outside to do individual tasks. These task workers are temporary people, who complement and supplement regular administrative members of the company team.

The middle of your organization is typically lean and mean. The middle circle is comprised of Project Experts—people who come to a company from outside agencies that specialize in placing skilled professionals who provide services that organizations must have to be competitive. Management chooses not to add these workers to their regular payroll and benefits plans, thus realizing a significant cost savings.

When you choose to bring in interim Project Experts, you must be particularly careful to correctly classify such workers in accordance with the **IRS GUIDELINES** (see sidebar on next page) and the

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law arising out of any litigation, such as that between Microsoft and some former workers. What can you do to help minimize your company's risk?

STEP 1

First, produce a Project Specification sheet for the project you wish to accomplish. Share the Project Specification with your third-party outsource company. Then, let the outsource do all the recruiting, interviewing, hiring and subsequent managing of the person or people hired by them for you based on your Project Specifications.

Remember: The person or team of people brought in to get the project done should be employees of the third-party outsource, not of your company.

STEP 2

Second, review the following list. Call an internal meeting and/or send out an informational memo to anyone in your company who could possibly bring in an outside resource. Inform them about the dos and don'ts and explain how to avoid potential risk.

- Don't include the individual or team in company training programs, special parties or social events.

- Don't handle any interim worker tax filings, benefits issues, etc. Make sure all that is handled by the outsource—not your company.

- Don't hold any discussions regarding rates, wages or wage adjustments with the interim expert. That's the job of your outsource.

- Don't convey satisfaction or dissatisfaction about the interim expert's or team's performance directly to the worker. Talk with your outsource liaison about such issues.

- Don't include expert workers in the distribution of any type of benefits package information. Remember, he/she/they are employees of the outsource—not your company.

- Don't provide the interim worker with your com-

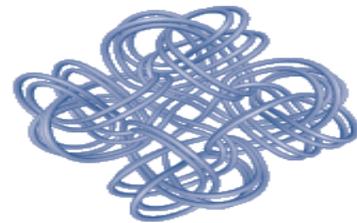
pany procedures or employee manuals. This may mean separate manuals for interim experts.

- Don't supply company letterhead or business cards with the interim expert's name on them.

As a safety measure, consider asking interim experts to sign a release or disclosure form provided by the outsource indicating his/her/their understanding that he/she/they are not included in any of your company's benefits programs.

Working with interim experts is not unlike hiring an outside consulting firm. Always maintain a firm business arm's-length relationship that will allow you to get the project accomplished while avoiding problems for the company.

Note that this does not mean that you must treat the interim expert as a pariah. But everyone in your organization *must* know that it is essential to maintain a separation between your company employees and any interim experts who are employees of the outsource company.



RELAX! THIS KNOT CAN BE UNTIED

When executives and managers don't have enough people in-house to do the work, they have a wonderful source for help. Significant functional and work-related benefits accrue to those using interim experts. For example, there is a lot of talent out there that has been downsized out of jobs and who have the capabilities, skills, knowledge and experience to perform project work that may otherwise go undone, be poorly done or remain incomplete. Interim staffing is how project work gets done today.

Finally, the objective of this article is not to scare you away from using interim resources but, rather, to help you use them well. ■

IRS GUIDELINES

Employers who classify workers as independent contractors should carefully examine the 20 common-law rules used by the Internal Revenue Service to determine proper worker

classification. The IRS views “yes” answers to the following 20 questions as evidence of an employer–employee relationship.

1. Do you provide the worker with instructions on when, where and how work is performed?

2. Did you train the worker in order to have the job performed correctly?

3. Are the worker’s services a vital part of your company’s operations?

4. Is the person prevented from delegating work to others?

5. Is the worker prohibited from hiring, supervising and paying an assistant?

6. Does the worker perform services for you on a regular and continuous basis?

7. Do you set the hours of service for the worker?

8. Does the person work full-time for your company?

9. Does the worker perform duties on your company’s premises?

10. Do you control the order and sequence of the work performed?

11. Do you require workers to submit oral or written reports?

12. Do you pay the worker by the hour, week or month?

13. Do you pay for the worker’s business and travel expenses?

14. Do you furnish tools or equipment for the worker?

15. Does the worker lack a “significant investment” in tools, equipment and facilities?

16. Is the worker insulated from suffering a loss as a result of the activities performed for your company?

17. Does the worker perform services solely for your firm?

18. Does the worker not make services available to the general public?

19. Do you have the right to discharge the worker at will?

20. Can the worker end the relationship without incurring any liability?

Source: IRS Publication 937, Employment Taxes and Information Returns

“Penalty for treating an employee as an independent contractor. If you classify an employee as an independent contractor and you had no reasonable basis for doing so, you can be held liable for employment taxes for that worker. Further, if you do not withhold from his

or her wages, you may be held personally liable for a penalty equal to taxes that should have been paid if you are the person responsible for the collection and payment of withholding taxes.”

Where Does FLEX EXEC S MANAGEMENT SOLUTIONS Fit In?

Since 1990, **FLEX EXEC S MANAGEMENT SOLUTIONS** has been successfully untying the Gordian Knot of interim placement for our clients. We stay on top of the latest judicial, regulatory agencies and IRS rulings and make sure our client companies are aware of the issues so they may concentrate on *their* priorities—the work of their company. Interim resources allow our clients to focus on their high-priority to-dos while qualified, flexible experts get the work done.

FLEX EXEC S places interim executives, high-level managers and project experts. Many of these skilled professionals possess knowledge and expertise gained in functional areas, such as human resources, finance and operations.

FLEX EXEC S is *the* source for interim management, executive search and human resource consulting.

If we may assist you in making your next project a success, or if you have questions or concerns about interim placement, please call us. We can help.

630 . 655 . 0563



645 Executive Drive
Willowbrook, IL 60521
630 655 0563
fax: 630 655 0564
e-mail: info@flexexecs.com
www.flexexecs.com

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