



**A Survival Guide For
Technical and Professional Contractors
In The New Millennium**

Appendix B:
Glossary of Terms for Contract Professionals

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Appendix B: Glossary of Terms for Contract Professionals

The Never Ending Glossary

A dictionary contains words, usually in alphabetical order, along with information about their forms, pronunciations, functions, etymologies, meanings, and syntactical and idiomatic uses. A glossary looks like a dictionary, but it focuses on the meanings and usages of words only in a specific context. The context in this case is technical and professional contracting.

This glossary is by no means authoritative or complete. But it adequately covers the ground. I have gleaned the definitions from various books in my library, online articles, dictionaries, and specialized online glossaries. I tried to create original definitions, and I apologize up front if some of the definitions in this appendix draw “too” freely from existing sources.

You can easily select letter headings in the bookmarks column in the left hand margin of this PDF document. Additionally, you can use the Find function in Acrobat Reader to locate specific words anywhere in the document. Just click on the “binoculars” icon and enter a the word you want in the “Find” window.

Did a definition in this glossary miss the mark? Have I left something out? What would you like to see that isn't here? Send your suggestions to resources@cehandbook.com.

Online Dictionaries and Glossaries

Here are some online resources to help you locate terms and definitions not found in the glossary below. A recent search on <http://www.google.com/> using the keywords <glossary or glossaries> returned almost 12,000 listings of specialized glossaries.

Narrow your search by entering qualifying keywords, e.g. <insurance glossary>, <retirement glossary>, <financial glossary>, <legal glossary>, <legal dictionary>, etc.

Locate additional reference resources under the heading "General Reference" in Appendix A: Resources for Contract Workers in The Contract Employee's Handbook, http://www.cehandbook.com/cehandbook/docs/cehandbook_appendix_a.pdf.

General Lists of Glossaries

Acronym Finder

<http://www.acronymfinder.com/>

The Acronym Finder is a world wide web searchable database of more than 206,000 abbreviations and acronyms about computers, technology, telecommunications, and military acronyms and abbreviations. The Acronym Finder is not a glossary of terms, web search engine, dictionary, or a thesaurus -- it is only designed to search for and expand acronyms and abbreviations.

AllWords Glossaries Homepage

<http://www.allwords.com/Glossary>

First, click on the glossary you want. Then click on a letter to return a list of terms beginning with that letter, or enter a specific term.

OneLook Dictionaries

<http://www.onelook.com/browse.shtml>

This site indexes almost three million words in approximately 700 online dictionaries included in the famous OneLook® Dictionaries word search database. Select and browse an individual dictionary or glossary, or use the site's search engine for a faster word lookup.

Retirement Plan and Financial Terms

About.com Financial Glossary and Dictionary

<http://retireplan.miningco.com/money/retireplan/cs/financialglossary/>

Links to retirement planning terms, business terms, stock terms and other money matters. The links in the Subjects column take you to pages with additional information relating to retirement planning, investing, and tax planning.

mPower Cafe Glossary

http://401k.mpower.com/glossary/glossary_s1.xsp

A comprehensive, alphabetical list of financial and investment terms relating to 401(k) plans.

Employment Terms

GotTrouble.com Glossary of Employment Law Legal Terms

http://www.gottrouble.com/legal/employment/glossary/glossary_a.html

Alphabetical list of employment law legal terms.

The Staffing Industry Glossary of Terms

<http://www.sireport.com/resources/glossary.html>

This glossary of staffing industry terms is a set of "working definitions" for staffing industry professionals. Although it is not a definitive list, it is useful nonetheless in deciphering staffing industry lingo.

Insurance Terms

To find more glossaries enter the keywords <insurance and glossary> in your favorite search engine.

Complete Glossary of Insurance Coverage Explanations

http://www.coverageglossary.com/lcgroup_explanations.html

Click on the letters to jump around a list of coverage explanations alphabetically, or just scroll down. You can also take a shot for answers with a convenient search tool.

Insure.com Insurance Guide

<http://www.insure.com/glossary.cfm>

Enter a letter or term in the search window to find listed terms. Terms are gleaned from American Council of Life Insurance, Health Insurance Association of America, and Standard & Poor's.

InsWeb Glossaries of Insurance Terms

<http://www.insweb.com/learningcenter/glossary/default.htm>

From "Annuitant" to "Z Table," InsWeb glossaries explain many bewildering insurance terms. Separate glossaries are provided for Annuity Terms, Auto Insurance Terms, General Insurance Terms, Health Insurance Terms, Legal Terms, Liability Terms, Life Insurance Terms, Property Insurance Terms, and Workers Compensation Terms.

Legal Terms

To find more glossaries enter the keywords <legal and (glossary or dictionary)> in your favorite search engine.

Law.com Dictionary

<http://dictionary.law.com/lookup2.asp>

This is a very complete dictionary based on The Real Life Dictionary of the Law by Gerald and Kathleen Hill. Enter a legal term or phrase or choose a letter, then select the word you want.

Lawyers.com Glossary

<http://www.lawyers.com/lawyers-com/content/glossary/glossary.html>

This legal terms law dictionary from Merriam-Webster® includes some 10,000 legal terms, pronunciations and legal definitions. Just type in the word to search the database, or click on a letter to browse all the words in that section.

Nolo Legal Encyclopedia

<http://www.nolo.com/encyclopedia/>

Plain-English articles on the legal topics that affect you most. To find what you need in the encyclopedia, you can choose a topic from the list, choose a topic or subtopic from the Table of Contents, or enter your own search term.

Nolo's Shark Talk Dictionary

<http://www.nolo.com/dictionary/>

Nolo's Shark Talk dictionary is your life-raft in the sea of legal jargon. Do you need to know the meaning of sprinkling trust, toxic tort or some equally puzzling legal term? Look it up here. Nolo's dictionary contains plain-English definitions for over a thousand legal terms, from the common to the bizarre.

Online Dictionaries

Merriam-Webster Online Dictionary

<http://www.m-w.com/>

This is Dungaree Dan's absolute favorite online dictionary. The site contains a comprehensive and easy-to-use dictionary and the-

saurus plus word games, word of the day, and other fun features.

YourDictionary.com

<http://www.yourdictionary.com/>

YourDictionary.com gives you instant access to Merriam-Webster's Collegiate Dictionary and Thesaurus, and many other language resources. There are links to dictionaries in over 230 different languages, translation tools, grammar guides, compendiums of quotations and sites filled with synonyms and acronyms. Probably the most useful links are the ones to specialty dictionaries that define jargon, organized into over 80 categories by industry and technical field.

Alphanumeric Glossary of Terms

Numeric Terms

IRS Form 1099-MISC.

Companies use this form to report to the IRS payments over \$600 paid to unincorporated independent contractors. Companies do not have to prepare Form 1099-MISC. for corporations. Many companies make it a practice to prepare Form 1099-MISC. for all their vendors, even when it is not required.

IRS Form 1099-MISC. states the client's (payer) name, address and tax identification number. It also states the independent contractor's (recipient) name, address and tax identification number.

IRS Form 1099-MISC. reports total non-employee compensation in Box 7. Backup withholding is reported in Box 4 only if the client withheld a 31% income tax assessment because the independent contractor failed to supply a Social Security number or valid tax identification number. See *Backup withholding*.

1099-compliant

1099-compliant means that you satisfy the common law factors that define an independent contractor relationship. In other words, you are able to satisfy the powers that be that there is little chance that the IRS or another government agency might reclassify you as an employee of the client.

1099 contractor

1099 contractor is an informal name for independent contractor. The term comes from the fact that individual workers who are independent contractors receive an IRS Form 1099-MISC. from the payer at the end of the year. 1099 contractors are distinguished from W-2 contractors who are regular employees of their

employer of record, and who therefore receive IRS Form W-2 from the payer at the end of the year. I have heard independent contractors referred to as 1099 contract employees, but this usage is obviously a contradiction in terms.

1099 contract

A 1099 contract is a contract between an independent contractor and the contractor's client. The term is frequently used to describe either the business relationship or the actual contract between an independent contractor and the contractor's client. Examples are the contract between an independent contractor and a recruiting firm, or between the contractor and a 1099 pass-through agency. The term also describes a direct contract between an independent contractor and the end user of the contractor's services. See *W-2 contract*.

1099 employee

1099 employee is a contradiction in terms, an oxymoron, used to describe an independent contractor who is "employed" by a client. There is no such animal as a 1099 employee. The ambiguity inherent in this term goes to the heart of the entire issue of contingent work, and to the proper classification of workers as either independent contractors or employees.

An independent contractor who does not comply with the common law factors that define an independent contractor places the client at risk of having the IRS or another government agency reclassify the contractor as an employee of the client. Likewise, employees of the client who treat an independent contractor like a fellow employee also place their employer at risk. The consequences of reclassification are dire, and they fall much harder on the client than they do on the reclassified independent contractor.

1099 pass-through agency

A 1099 pass-through agency is an "agency of record" as opposed to an "employer of record." It operates like an employer of record in that it signs a contract with the client on behalf of the independent contractor. Likewise, it invoices the client and collects revenues on behalf of the contractor, and it pays the contractor, usually upon receipt of payment from the client. Technically the independent contractor (hence 1099) subcontracts his or her services to the agency.

Reputable 1099 pass-through agencies scrupulously confirm that their independent contractors comply with common law factors defining 1099 tax status. Unscrupulous, negligent, or just plain stupid agencies may represent their independent contractors as their W-2 employees. This practice places both the agency and the client at serious risk that the IRS will successfully reclassify the contract worker as an employee of the agency, the client, or

both the agency and the client.

1099 pass-through service is provided by stand-alone pass-through agencies and by full-service recruiting firms. Stand-alone pass-through services usually charge \$4 or \$5 per hour. Recruiting firms typically charge significantly more, especially if they also located the assignment for the contractor. Contractors who “work 1099” through a full-service recruiting firm invariably take a hit financially compared with “working W-2” because recruiting firms almost never pass through the entire payroll tax savings to their 1099 contractors.

The independent contractor who works through a 1099 pass-through agency is responsible for paying all payroll taxes and quarterly estimated state and federal income taxes. The agency reports the contractor’s non-employee compensation on IRS Form 1099-MISC. See *W-2 pass-through agency, IRS Form 1099-MISC*.

1706

In 1978 Congress passed a revenue act that established that employers could appeal reclassification of independent contractors by the IRS if the employer’s industry had consistently treated certain classes of workers as independent contractors. These provisions are spelled out in Section 530 of the revenue act.

Section 1706 of the Tax Reform Act of 1986 amended the Revenue Act of 1978 by adding a new subsection (d) to Section 530. Subsection 530(d) provides that employers threatened with IRS reclassification can no longer seek safe harbor relief for certain job classifications in which the worker is represented by a third-party agency. For some arcane reason Congress singled out for exclusion from safe harbor protection only individuals who provide services “as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.”

Almost overnight, thousands of independent contractors found it necessary to convert from 1099 status to W-2 status as client companies grew increasingly fearful of IRS audits that might reclassify independent contractors as employees of the client.

The overriding impact of Section 1706 is that it precipitated a mass hysteria among corporate HR departments as the IRS began to reclassify technical contractors working through third-party agencies. The IRS became more aggressive, and employers began to discriminate against *all* independent contractors, even true consultants and one-person corporations. Thus, Section 1706 fueled the rise in popularity of scaled-up temp agencies, and thereby caused untold thousands of contractors to lose control over their contracting careers.

401(k) plan

401(k) plans are retirement vehicles that allow employees to save for their own retirements by contributing pre-tax dollars to a tax-deferred retirement savings fund. The name 401(k) comes from the section of the Internal Revenue Code that created the plan.

The maximum contribution to a 401(k) plan is 15% of gross wages, but not more than \$10,500 in the year 2000. Total contributions include the employee's voluntary contribution plus an optional contribution by the employer.

There are three types of employer contributions, which can be in the form of actual dollars or company stock:

- **Basic contribution:** A fixed percentage of payroll (gross wage plus bonus payments).
- **Matching contribution:** A percentage of the employee's voluntary contribution.
- **Profit sharing contribution:** A voluntary contribution based on the company's profits.

Most employers impose a waiting period of at least three months to qualify for their retirement plan. Most firms also vest their contributions, meaning that the employer's contribution is not paid unless the employee remains with the company for a specified period after the contribution was earned. Vesting gives employees an incentive to stay with the employer.

Although the money in your 401(k) plan is yours, it is held in trust for you by the plan's administrator, usually an outside company that specializes in retirement plans. Nevertheless, you can still access your savings and change how the money is allocated among a wide range of mutual funds.

Your 401(k) savings are not taxed until you withdraw the money. This means that all of your capital gains are automatically reinvested so that your entire savings grows exponentially.

Withdrawals from your 401(k) plan after age 59 ½ are taxed at the then prevailing rate. Money you take out before age 59 ½ is subject to a hefty tax penalty, and possibly an additional penalty imposed by the plan administrator. You can borrow money from the plan, and pay no penalty, providing you pay the money back on time. You can also withdraw your 401(k) savings in special circumstances to cover emergencies or to purchase a home.

While a 401(k) plan has a maximum employee contribution of 15% or \$10,500, the overall maximum for all defined retirement plans is 25% or \$30,000. To make up the difference some employers offer a money purchase plan in addition to a 401(k) plan. See *Money purchase plan*.

530 (d)

Section 530 of the Revenue Act of 1978 established that employers could appeal reclassification of independent contractors by the IRS if the employer's industry had consistently treated certain

classes of workers as independent contractors. Thus, Section 530 gives employers safe harbor relief from reclassification.

Section 1706 of the Tax Reform Act of 1986 amended the Revenue Act of 1978 by adding a new subsection (d) to Section 530. Subsection 530 (d) provides that employers threatened with IRS reclassification can no longer seek safe harbor relief for certain job classifications in which the worker is represented by a third-party agency. For some arcane reason Congress singled out for exclusion from safe harbor protection only individuals who provide services "as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work." See 1706.

Alphabetical Terms

A

Accountable plan

An accountable expense reimbursement plan is a written policy of the employer governing the reimbursement of work-related expenses. To be accountable the reimbursement policy must include all three of the following rules.

- Expenses must have a business connection – that is, you must have paid or incurred reimbursable expenses while performing services as an employee of your employer.
- You must adequately account to your employer for these expenses within a reasonable period of time.
- You must return any excess reimbursement or allowance within a reasonable period of time.

Expense reimbursements under an accountable plan are not part of your income. They are paid with tax-free dollars, and they don't appear on your Form W-2.

Umbrella services, such as the one provided by P.A.C.E., www.pacepros.com/, have accountable plans that are specifically designed to reimburse contractors using tax-exempt dollars for *all* of their work-related expenses. Ordinary employers of record cannot do this.

Most contract employees incur significant expenses related to operating their home office, keeping their skills up to date, and marketing their services. A well crafted accountable plan lets your employer offset these costs with tax-free reimbursements, potentially saving you several thousand dollars a year.

All too often, Contract Professionals must convert to W-2 employment status in order to satisfy the requirements of their IRS-wary clients. In doing so, however, they give up the ability to write off

most of their out-of-pocket, business-related expenses. An accountable plan lets W-2 employees "write off" their out-of-pocket expenses just like a self-employed independent contractor.

Actual damages

See *damages*.

Age Discrimination in Employment Act (ADEA)

ADEA is a federal law that prohibits arbitrary discrimination against workers over the age of 40 in any employment decision, especially firing. Companies must treat agency temps the same as their own employees with respect to the provisions of ADEA. See *Older Workers Benefit Protection Act*

Agency

A firm that functions as an agent or that employs agents. Frequently used in place of the term contract employment agency. Examples are recruiting firms, staffing firms, pass-through agencies, and umbrella services.

Agency job board

See *job board*.

Agency of record

Agency of record refers to an agency that has a direct contract with a client to provide the technical or professional services of a specified individual, in which that individual is operating as an independent contractor. The term is used in the same context as the term employer of record, in which case the agency provides the technical or professional services of a contract employee. See *Employer of record* and *Direct contractor*.

Agent

An agent is an individual who facilitates a business relationship in return for a fee. Examples are recruiting agent, insurance agent, marketing agent, talent agent, sports agent, and literary agent. Sometimes agents are referred to as brokers. The person who appoints an agent is called the principal. In the contract employment industry the principal may be either a client company or a Contract Professional. Client companies engage the services of a recruiting agent or recruiter to locate talented Contract Professionals. Alternatively, Contract Professionals engage the services of a marketing agent or talent agent to help them locate contract assignments. See *broker*, *recruiter*, *marketing agent*, *talent agent*.

Agreement

An agreement is an arrangement as to a course of action. A duly executed and legally binding contract is an example of an agreement, but the term agreement actually has a broader meaning, including understandings that might not rise to the level of a legally binding contract. Examples are employment agreements,

letters of agreement, consulting agreements, subcontracting agreements, noncompete agreements, non disclosure agreements, nonsolicitation agreements, etc.

Americans With Disabilities Act (ADA)

ADA is a federal law that prohibits discrimination against individuals with physical or mental disabilities in employment, public services and places of public accommodation. Companies must treat agency temps the same as their own employees with respect to the provisions of ADA.

Annual review

The annual review is an insidious practice by employers that lock steps their employees into a rigid program of externally controlled promotions and salary increases. Independent contractors and contract employees are not subject to annual reviews, and are therefore able to increase their skills, responsibilities, and pay at their own speed and without interference. Annual reviews are why we refer to permanent, full-time, salaried employees, as "captive" employees. See *raise*.

Annual salary

Annual salary is the stated compensation paid to an exempt employee over the course of a year. Gross wage per pay period is computed as a fraction of the annual salary. For example, the annual wage is divided by 12, 24, 26, or 52, for monthly, half-monthly, biweekly, and weekly pay periods. Partial days are prorated on the basis of 2080 hours per year. See *gross wage, hourly wage*.

Approved vendor

An approved vendor is a company that has previously qualified to do business with another company. Approved vendors are sometimes called preferred vendors. There is nothing special about being an approved vendor, and approved vendor status does not imply or confer exclusive access to the client. See: *Preferred vendor*.

Arbitration

A method of alternative dispute resolution, without filing a lawsuit, in which the disputing parties agree to abide by the decision of one or more arbitrators. Mandatory arbitration is often written into contracts. In arbitration a neutral party, the arbitrator, hears the dispute and issues a binding decision. Parties may appeal arbitration decisions to the courts only under very limited circumstances.

Articles of incorporation

A document that is filed with the state in order to incorporate. It typically includes the name and address of the corporation, its general purpose and the number and type of shares of stock to be

issued. Clients may request a copy of the articles of incorporation as proof that they are signing a contract with an incorporated business entity.

Assignment

A specified task or amount of work undertaken by a technical or professional contractor, as in contract assignment; a project. See *contract assignment, project*.

Assignment of Rights Clause

Assignment is the transfer of rights under a contract to a third party. For example, a contract may assign the right to be paid to a payrolling firm or other party.

Association

An association is group of people who are organized with varying degrees of formality, who share common interests and have joined together for a common purpose. An association is not a legal entity, but it may assume the status of legal entity if it has a charter and shareholders, and if it operates like a corporation. For example, **P.A.C.E. - Professional Association of Contract Employees** is a for-profit association operating as a corporation, Jerzy, Inc., chartered in California and formally registered in every state where it does business.

Attachment

An attachment is an addition or addendum to a contract, such as a purchase order, payment schedule, job scope description, or change order. Attachments may be "incorporated by reference" in the main body of the contract, and their terms are binding on all parties. All parties to the contract must sign and date each attachment. See *side agreement*.

Attorney-in-Fact

An attorney-in-fact is a type of agency relationship where one person holds a power of attorney allowing that person to execute legal documents on behalf of the principal party. Decisions made by the attorney in fact are binding on the principal.

Attorneys Fees Clause

Contracts often contain an attorneys fees clause, which allocates to each party the obligation to pay legal bills in the event of legal action brought by either party to the contract or by a third party.

At will employment

At will employment is an employment relationship in which both the employer and the employee have the right to terminate the employment relationship at any time, for any reason, and without prejudice. Nevertheless, employers may not fire employees in a way that discriminates illegally, violates public policy, or conflicts with written or implied promises that the employer made concern-

ing the length of employment or grounds for termination. The statutory definition and enforcement of at will employment varies from state to state. In practice, virtually every aspect of employment (not just termination) is "at will."

Independent contractor relationships are seldom at will unless specified as such in a contract between the independent contractor and the client. This distinction is one of the common law factors that the IRS weighs in determining the employment status of individual workers.

Audit

A formal examination of an organization's or individual's accounts or financial situation. Government agencies conduct audits of company financial records and personnel files in order to determine the tax filing status of individual workers. It is during an IRS audit, for example, that the IRS may attempt to reclassify an independent contractor as an employee of the company for which the contractor worked. See *tax filing status*.

Auto Allowance

A fixed payment paid to an employee by an employer to reimburse the cost of operating one's automobile while on company business. An auto allowance eliminates the need to submit actual receipts and mileage logs in order to document reimbursable auto expenses. Auto allowances are tax-exempt.

B

Backup withholding

Independent contractors are required to give their clients a valid taxpayer identification number (TIN). IRS Form W-9 is used for this purpose. If an independent contractor fails to provide a valid TIN, the client is required to withhold 31% of what they owe the contractor as an assessment for income taxes. This assessment is called backup withholding, and it is paid to the IRS. In practice a client company should never engage the services of an independent contractor, or any other vendor for that matter, without first obtaining the vendor's TIN. See *Taxpayer identification number, IRS Form W-9*.

Beach time

Contractors refer to unpaid time off between contract assignments as beach time. Unpaid time off is like a voluntary or involuntary vacation, hence "beach time."

Bench time

Contractors refer to paid time off between contract assignments as bench time. Bench time usually applies to consulting firm

employees and salaried contractors who work in-house "at the bench" until they can be sent out on a new assignment.

Billing rate

The billing rate is the amount that a Contract Professional or staffing agency bills the client. Contractor recruiting firms, temp agencies, and other employers of record make their money on the margin between the rate that they invoice the client (billing rate) and the rate that they pay their contract employee (W-2 pay rate) or pay their subcontractor (1099 pay rate).

Board of Directors

The Board of Directors is the governing board of a corporation under the leadership of the Chairman of the Board. The board has fiduciary responsibility for the corporation. In other words, it is responsible for making important business decisions and legally binding financial decisions for the corporation. Directors are considered to be employees of the corporation. Directors are elected by the shareholders of the corporation at the annual meeting. The Board appoints the officers of the corporation, who manage day-to-day operations. In a one-person corporation the Board of Directors consists of the sole shareholder, who functions simultaneously as the Chairman of the Board, President, Vice President, Secretary, Treasurer, and the corporation's sole employee. See *corporation*.

Body Shop

A derisive and often well-deserved term for a recruiting firm that specializes in finding and placing foreign (high tech) workers on temporary assignments at U.S. companies. Body shops compete on price by billing significantly less than typical recruiting firms. Then they pay their H-1B visa holders even lower wages than typical recruiting firms pay American workers. Some body shops are set up as American subsidiaries of foreign companies. Body shops often abuse this relationship to bring in workers on an L-1 visa as an internal personnel transfer.

Body shops have a reputation for taking advantage of foreign workers' fears and ignorance to maintain their employees in a state of virtual indentured servitude. Fortunately, the immigration law signed by President Clinton in December 2000 has a portability provision that makes it possible for H-1B visa holders to change employers with relative ease. As a result, body shops have lost much of their hold on H-1B visa holders.

Boilerplate

Standardized text used in publications and formal documents. Contracts are constructed almost always of boilerplate clauses and terminology. Consequently, contract language should be studied carefully, and modified where necessary to personalize the

contract to your specific situation.

Bond

See *surety bond*.

Bonus

Bonus is money or an equivalent given in addition to a worker's usual compensation. Bonuses are usually treated as ordinary income. Examples are sign-on bonus, performance bonus, and Christmas bonus.

Breach of Contract

Failure to satisfactorily perform the provisions of a contract. For example, failure to complete the work by an agreed upon deadline, or failure of the delivered work to meet specified performance criteria. A material breach of contract is a breach that can trigger a lawsuit under the contract. See *damages, remedies*.

Broadcast e-mailing

Akin to junk mail or spam, broadcast e-mailing refers to the mass e-mailing of resumes by job seekers and placement agencies. When an unauthorized placement agency broadcast e-mails your resume it can cause lawsuit-wary client companies to reject later submissions by you or an authorized agency.

Broker

A broker is an intermediary, or agent, who arranges business deals. A broker may also negotiate contracts. Examples of brokers are staffing agencies and recruiting firms, talent agents, real estate agents, insurance agents.

Bulletin Board System (BBS)

A computerized version of the familiar cork bulletin board where people can leave messages and advertise things they want to buy or sell. There are thousands of special interest bulletin boards operated by individuals from their home computers, and much larger systems run by computer companies to provide information on their products. Many BBSs have Web pages. Also called Internet forums, message boards, or discussion groups. My favorite online BBS for Contract Professionals is Janet Ruhl's Real Rates Message Board at <http://www.realrates.com>. Click on "Message Board" in the left margin.

Business

Any activity concerned with the supplying and distribution of products and services, and related financial transactions.

Business expenses

Businesses earn money (revenues) and they spend money (expenses). The difference is called gross profit or loss. Revenues are taxed as income unless they are offset by expenses. Independen-

dent contractors declare their business expenses on Schedule C to reduce their tax liability. Umbrella services (such as P.A.C.E., <http://www.pacepros.com/>) reimburse their contract employees with tax-exempt dollars for out-of-pocket business expenses. Typical staffing agencies cannot do this. The inability to write off or be reimbursed for out-of-pocket business expenses is a major disadvantage of working through traditional staffing agencies.

Business form

Typically this means the tax filing status of a business. The primary business forms are Sole Proprietorship, Partnership, Limited Liability Company, and Corporation.

Business insurance

Business insurance is one way that businesses manage risk. Common examples for contract workers are general liability (GL) insurance, and professional liability insurance, also called errors and omissions (E&O). Client companies generally require that an independent contractor carry GL insurance to protect the client against damage to persons or property caused by the independent contractor. Clients may also require that independent contractors show proof of E&O coverage. E&O covers financial losses to the client's business caused by the independent contractor's negligence or incompetence. Contract employees are always covered by their employer's business insurance. The high cost of business insurance is one reason why many contractors choose to work through an employer of record instead of working as an independent contractor.

Business license

Most local communities require that businesses obtain a business license if they maintain a business presence in the community. Business licenses provide a registry of local businesses, and a source of revenue to local governments. Banks usually require a business license before they will open a business account.

Business-to-business contract

A contract between a vendor and a client is a business-to-business contract. Examples of business-to-business contracts are independent contractor agreements, 1099 contracts, and corp-to-corp contracts.

Bylaws

Bylaws are the rules adopted by an organization, chiefly for the government of its members and the regulation of its internal affairs. The bylaws of a corporation are adopted by the shareholders of a for-profit corporation or the board of directors of a non-profit corporation. Bylaws establish procedures for holding meetings and electing the corporation's officers and members of the board. Bylaws also establish the duties and powers of the cor-

poration's officers.

C

Cancellation Clause

See *termination clause*.

Captive consultant

A captive consultant is a captive employee who works on consulting assignments for a consulting firm. See *captive employee, consultant*.

Captive contractor

A captive contractor is a captive employee who works on contract assignments for a temporary employment agency.

Captive employee

Captive employees are permanent, full-time, salaried, benefited, regular employees.

Career

A career is a profession for which one trains. It is undertaken as a permanent calling, and usually involves consecutive, progressive achievement leading to ever-greater responsibility and financial reward. Examples are a consulting career, or a career as a technical or professional contractor.

Career coach

Career coaches are personal consultants who help their clients plan career goals, polish job-seeking skills, and develop a powerful professional network. A career coach may charge the job seeker either a flat fee or an hourly rate. Many outside recruiters refer to themselves as consultants and career coaches, but do not be deceived. Career coaches, like talent agents, work for the job seeker and talented professional. Outside recruiting firms work for the employer.

C-corporation

A C-corporation is the default form of corporation. In a C-corporation profits are taxed separate from the corporation's owners under subchapter C of the Internal Revenue Code. Other types of corporation are S-corporation, professional corporation, non-profit corporation, and religious corporation. See *corporation, S-corporation*.

Certificate of insurance

A form provided by the insurer verifying that a policy has been written and stating the general terms of coverage. Clients and general contractors often require that their independent contractors provide certificates of insurance to prove that they have cov-

erage for general liability insurance, errors & omissions insurance, and workers compensation.

Choice of law

See *Governing law*.

Chronological resume

See *resume*.

Clause, contract

See *Contract clause*.

Client

In the context of business, a client is a person or business that engages the professional advice or services of another business. Essentially, a client is a customer with whom a vendor has a contractual agreement or an ongoing business relationship. Independent contractors are vendors that provide consulting services to client companies.

Client-vendor relationship

The contractual relationship or ongoing business relationship between a vendor and client.

COBRA

COBRA stands for the Consolidated Omnibus Budget Reconciliation Act of 1985. The provisions of this federal law require employers who employ 20 or more persons to provide employees and their dependents with the opportunity to continue health care coverage when coverage would otherwise end because of a qualifying event such as termination, death, divorce or legal separation, coverage through Medicare, or when a covered dependent ceases to be a dependent child. The minimum continuation period is 18 months, and the maximum continuation coverage is three years. Some states may have more stringent COBRA laws. For example, California requires continued coverage if the employer employs only 12 persons.

Cold call

A cold call is a telephone call or drop-in visit made directly to a potential customer soliciting business without prior contact. Cold calling is the act of making a cold call.

Common law

Common law is the body of law developed in England primarily from judicial decisions based on custom and precedent, unwritten in statute or code, and constituting the basis of the English legal system and of the system in all of the U.S. except Louisiana. Essentially, common law is law that comes from common practice, as opposed to legislation.

Common law employee

A common law employee is any worker who is determined to be the employee of an employer based on established common law criteria. See *common law factors*.

Common law factors.

Common law factors are guidelines drawn from past experience. For example, the IRS and many state and federal agencies have issued lists of common law factors that in the aggregate discriminate between employees and independent contractors. The IRS once published a list of 20 common law factors, known popularly as "the twenty questions." The list has been shortened and modified somewhat in the 1996 IRS training manual called Independent Contractor or Employee. The training manual identifies 11 common law factors in three areas of "control." The courts have cited at least 51 common law factors over the years in determining worker status.

Company job board

See *job board*.

Compensation

Compensation is value received in exchange for your product or personal service, and may be based on time (e.g., \$100/hour) or a specified deliverable or milestone (e.g., \$10,000 upon acceptance of a finished product.). Compensation, or payment, can be in the form of money, or any other mutually agreed upon exchange of value. See *consideration, deliverable, milestone*.

Consequential Damages

See *damages*.

Consideration

The concept of consideration goes to the core of contract law. Consideration is something of value to the parties making a contract. A contract is founded on the exchange of one form of consideration for another. For example, a Contract Professional may agree to develop a software application in return for the consideration of \$150 per hour. The client agrees to pay \$150 per hour in return for the consideration of a properly functioning software application. Each party provides something of value to the other party in exchange for something of value received. To be legally binding, a contract or a contract clause must show consideration.

Consultant

Consultants consult. That is, consultants are skilled professionals who are paid to provide solutions, usually in the form of specific deliverables. With this in mind, I define a consultant as a *project-oriented solution provider*. Most consultants are independent businesses, and they almost always qualify as IRS-compliant indepen-

dent contractors. Unfortunately, the term *consultant* is frequently misused by ordinary sales people, including hack recruiters, who seek to glorify their role by co-opting the moniker of a highly respected professional.

Consulting firm

A consulting firm is an outside vendor that provides the services of a consultant. Consulting firms may subcontract with individual contractors and contract employment agencies, but most of their workers are permanent, salaried, benefited, regular employees. I refer to the regular employees of a consulting firm as *captive contractors* to distinguish them from hourly-paid contract employees and self-employed independent contractors.

Contingent

Dictionaries variously define contingent as relating to something happening by chance or unforeseen causes, subject to chance or unseen effects, intended for use in circumstances not completely foreseen, or dependent on or conditioned by something else.

Contingent employment arrangement

The phrase "contingent employment arrangements" was coined by Audrey Freedman at a 1985 conference on employment security and was used to "connote conditionality." Since the phrase's original usage, contingent employment has been identified with a wide range of employment practices, including part-time work, temporary work, employee leasing, self-employment, contracting out, and home-based work. As a result, the operational definition of a contingent job has become any arrangement which differs from full-time, permanent, wage and salary employment. (See: On the Definition of Contingent Work, <http://stats.bls.gov/opub/mlr/1989/12/art2full.pdf>)

Contingent recruiter

A contingent recruiter is a third-party individual or firm that recruits regular full-time employees for companies who pay on a contingent basis. That is, the recruiter collects a commission, usually 25 to 30% of the new recruit's anticipated annual salary, only after the company actually hires the individual. Recruiters usually are required to return payment or replace an employee at no charge if the employee quits before 90 days of continuous employment.

Contingent recruiters often mitigate the risk of losing their commission during the first 90 days of employment by negotiating a contract-to-hire "trial period" during which the candidate works as a contract employee prior to being hired full-time.

Contract-to-hire arrangements through a recruiting firm are bad news. The recruiting firm generally bills the client at an hourly billing rate equal to 1/1000th of the new recruit's proposed annual

salary (the divide-by-1000 rule of thumb). It invariably pays the new recruit at an hourly wage equal to one-half of that amount. Contract-to-hire recruits receive no benefits. See *retained recruiter*.

Contingent staffing

Contingent staffing refers to the placement and employment of temporary employees.

Contingent work

Labor market analysts use the term contingent work to refer to flexible work arrangements that do not involve full-time wage and salary workers. The term "contingent work" was coined by Audrey Freedman in 1985 to describe "conditional and transitory employment arrangements as initiated by a need for labor--usually because a company has an increased demand for a particular service or a product or technology, at a particular place, at a particular time."

Contingent worker

An individual who performs contingent work. Essentially, a contingent worker is any worker who is not a regular, full-time employee.

Contract

A contract is an agreement between persons or businesses, which obliges each party to do, or not do, a certain thing. Technically, a valid contract requires 1) an offer (terms of the agreement), and 2) an acceptance of that offer (signatures of the parties), and, 3) in common law countries, consideration (compensation or payment). Examples are client-vendor contracts, and employer-employee contracts. Every contract is negotiable. You should never sign a contract that you have not read or that contains language that you do not understand or do not want to accept. See *compensation, consideration*.

Contract assignment

A contract assignment is an assignment to do a specified amount of work determined by a contract between a vendor (independent contractor, agency, or consulting firm) and a client. Synonymous with project. Usage: The contract assignment lasted six months. I located a contract assignment on my own without using an expensive recruiting firm. See *assignment, gig, project*.

Contract clause

Contracts are generally organized into sections or clauses, each clause addressing a separate issue. You should always read contracts carefully, and strike or modify abusive and unfair language in contract clauses, or add new clauses that address important issues.

Contract duration

Independent contractor agreements generally have a start date and an ending, or termination, date. These dates define the contract duration. For the most part, independent contractor agreements have a fixed duration, and employment agreements are open ended. The IRS and other government agencies look for the presence or absence of a fixed duration contract when making a decision on worker status.

Contract employee

A contract employee is a skilled temporary employee who is employed by a contract employment agency and assigned to a client company under terms specified by a contract between the agency and the client company.

Contract employment agency

A contract employment agency is a third-party employer of record that employs workers who are assigned to a client company under terms specified by a contract between the agency and the client company. Synonyms include broker, contractor recruiting firm, employment agency, recruiting firm, temp agency, temporary employment agency, placement agency, and consulting firm.

Contract extension

A contract extension extends the duration of an existing contract, usually without modifying the original terms. A typical contract extension clause might read: "Notwithstanding anything to the contrary herein, and by mutual agreement of the parties, this Agreement and all the terms and conditions hereof shall be renewed automatically from month to month unless either party notifies the other, in writing, at least thirty (30) days prior to its expiration date of a desire to modify or terminate it, in which event negotiations will be undertaken without undue delay."

Contracting

Working as a contractor. See *contractor*.

Contractor

I reserve the name "contractor" for contract employees and independent contractors who are paid by the hour, and who perform routine, generic tasks that are typically performed by regular employees. A contract professional who bills by the project is more appropriately referred to as a "consultant", although the terms are often used interchangeably. See *consultant*, *contract employee*, *Contract Professional*.

Contract Professional

A Contract Professional is an individual who works as a technical or professional contractor. I choose to capitalize the term Contract Professional because it designates a major career category, and

is independent of the worker's tax status.

Contract recruiter

Contract recruiters are hourly-paid Contract Professionals who contract directly with companies to recruit both regular employees and contract workers. Generally, their only compensation is the hourly rate they bill their clients. Contract recruiting is growing by leaps and bounds. Companies are learning that it is almost always cheaper to hire a contract recruiter by the hour than to go through an outside recruiting firm. Because of this, it is quite likely that when a contractor calls the HR department of a potential client that the person who answers the phone will be a fellow contractor. Contractors share a common bond, and that can only bode well for contractors looking for a new assignment.

Contractor recruiting firm

A contractor recruiting firm is a temp agency that specializes in placing and employing technical and professional contractors as opposed to clerical, industrial, and seasonal temps.

Contract term

See *contract duration*.

Contract-to-hire

See *temp-to-perm*.

Contract Worker's Bill of Rights

The Contract Worker's Bill of Rights identifies generally accepted standards of professional conduct as they apply to contract brokers, contract employment agencies and others who assist contract workers in their relationship with client companies. The Contract Worker's Bill of Rights provides an objective standard by which to separate the good from the bad, the professional from the unprofessional, the ethical from the unethical, and the legal from the illegal. Read the Contract Worker's Bill of Rights at <http://www.cehandbook.com/cehandbook/cwbor.html>.

Copyright

Copyright is essentially the legal exclusive right of the author of a creative work to control how a creative work is used. Copyright includes the exclusive right to make copies, authorize others to make copies, make derivative works, sell and market the work, and perform the work. Any or all of these rights can be sold separately through the transfer of copyright ownership.

These articles by Brad Templeton are helpful in understanding copyright basics:

A Brief Intro to Copyright

<http://www.templetons.com/brad/copyright.html>

10 Big Myths About Copyright Explained

<http://www.templetons.com/brad/copymyths.html>

For those legal/academic types here is a link to the online version of the U.S. Copyright Law, published by the United States Copyright Office:

Copyright Law of the United States of America

<http://www.loc.gov/copyright/title17/>

Copyright notice

A copyright notice consists of the © symbol or the word Copyright, plus the date of publication and the author's name. For example, Copyright 1998-2001 James R. Ziegler. A copyright notice is not required in the USA and in other countries that have signed the Berne Convention or GATT, but it is a good idea to include a copyright notice on all original works under your control to remind others that your original work is not in the public domain. It is recommended that you place a copyright notice on your resume and personal marketing materials to prevent their misappropriation and misuse by unethical recruiting firms.

Corporate resolution

A written document issued by a corporation's board of directors that describes an action taken by the board on behalf of the corporation.

Corporate veil

The term corporate veil refers to the fact that the personal assets of shareholders, directors and officers are generally protected from law suits brought against the corporation. See *corporation*.

Corporation

A corporation is a legal entity formed and authorized by law to act as a single person. It consists of one or more persons and is legally endowed with various rights and duties including the capacity of succession. Corporations are owned by one or more Shareholders. Fiduciary responsibility lies with a Board of Directors. The corporation is managed by its corporate officers, namely, the President, Vice President, Secretary, and Treasurer. In the case of a One-Person Corporation one individual serves as the sole share holder, the sole member of the Board of Directors, and all four corporate officers. Directors and officers are necessarily employees of the corporation.

Corp-to-corp

Short for corporation-to-corporation. See *corp-to-corp contract*.

Corp-to-corp contract

A corp-to-corp contract is a business-to-business contract between two corporations. The term is frequently used to describe

either the business relationship or the actual contract between a one-person corporation and the corporation's client. Examples are the contract between an incorporated contractor and a recruiting firm, or between the contractor and a pass-through agency. The term also describes a direct contract between an incorporated contractor and the end user of the contractor's services. Corp-to-corp contract is often used interchangeably (and incorrectly) with 1099 contract.

Cost center

A cost center is an area of responsibility within a company or organization against which costs are accumulated. By contrast, a profit center is an area of responsibility that generates revenues for a company or organization. Examples of cost centers are Human Resources, Marketing, and Administrative Services, which spend money, but which do not directly generate revenues. Examples of profit centers are Sales Departments and Consulting Divisions which generate receipts and receivables. See *profit center*.

Curriculum vitae

Literally, course of life. A curriculum vitae, or CV, is a form of chronological resume usually found in academic circles. A CV lists sequentially positions held, publications, accomplishments, memberships, honors, and education. Such an exhaustive and comprehensive document is inappropriate for contract workers who need only justify that they have the skills and experience needed to successfully complete a specific assignment.

Customer

A customer is an individual or business that purchases a product or service from a vendor. A client is a customer that has an ongoing professional relationship with a vendor. See *client, vendor*.

D

Damages

The remedy, usually in the form of monetary compensation, for a breach of contract or other successful legal action. Damages may include the award of actual damages, interest on that amount, out of pocket expenses, and recovery of legal fees. Types of damages include:

- **Actual Damages:** Also called direct or compensatory damages. Compensation for the actual loss resulting from a breach of contract. For example, the amount of disputed payments under a contract.

- **Consequential Damages:** Damages that are not a direct result of a breach of contract, but, rather, are those elements of damages arising from a breach of contract that are measured by the reasonable expectation of lost income or lost business opportunities.
- **Incidental Damages:** Damages that result from a breach of contract. Examples are the cost of recalling a defective product, or the expense of hiring a replacement to repair a botched job.
- **Punitive Damages:** A monetary award made by the court that goes beyond simple reimbursement for losses suffered (actual or compensatory damages) and, in the manner of a fine, assesses the defendant an amount of cash designed to punish the defendant for his evil behavior or to make an example of him/her.

Never sign a contract that contains a provision for anything but actual damages attributable to a specified breach. You should always protect yourself from claims of damages by obtaining adequate coverage for General Liability Insurance, Professional Liability Insurance (also known as Errors & Omissions Insurance), and, if applicable, an appropriate surety bond.

See *breach of contract, general liability insurance, errors & omissions insurance, surety bond.*

D.B.A.

Short for "Doing Business As" a fictitious name. A name is considered fictitious if it does not contain the business owner's surname, or if it contains words other than those in the owner's full name. For example, if the owner's name is Sally Smith, the names "Acme Java Jockeys," "Sally Smith Consulting Services" and "Sally Smith & Company" are D.B.A.s or fictitious names. A business entity that operates as a D.B.A. must file a fictitious name statement with the appropriate local agency for that purpose. See *fictitious name.*

Deadbeat client

A deadbeat is someone who persistently fails to pay personal debts or expenses, as in "deadbeat dad". A deadbeat client is a client that pays slowly or not at all. See *client.*

Defamation

Defamation is an intentionally made false or malicious statement about another person, either spoken (slander) or published (libel) that damages the other person's reputation. In some cases an employer's blacklist or poor reference may be defamatory. Regardless of one's feelings about an individual, company, or situation, a professional must refrain from communicating anything about another person that is not absolutely true.

Default on a contract

Failure to meet the specified terms of a contract such that the failure triggers the right of the other party to sue, or excuses the

other party from performing its obligation under the contract.

Defined benefit plan

A defined benefit plan pays a definite, pre-determined amount of money when the worker retires or becomes disabled. For example, a pension that pays a fixed monthly amount of money based on the number of years of service is a defined benefit plan. Benefits may also be calculated as a percentage of total salary. See *pension, defined contribution plan*.

Defined contribution plan

A defined contribution plan, in contrast to a defined benefit plan, makes no guarantee as to the amount paid out upon retirement. Instead, the employer contributes a defined amount into the pension fund at monthly or yearly intervals. The employer's contribution may be a fixed percentage of each employee's wages, or a percentage of the company's profits prorated according to the amount of each employee's wages. The amount in each employee's pension is determined by how much was contributed by the employer, plus any gains or losses resulting from investments of the contributed funds. A 401(k) retirement savings plan is one example of a defined contribution plan. See *pension, defined benefit plan, 401(k) plan*.

Delegation of Duties Clause

A delegation of duties clause transfers the obligations under a contract to a third party. For example, a contract may prohibit, limit, or allow the delegation of a duty to perform personal services to another party. Delegation differs from subcontracting to the extent that in delegation the transferring party does not remain liable for performance on the contract. See *subcontractor*.

Deliverable

A deliverable is a tangible and measurable amount of work or work product that a project must produce in order to meet the objectives of a contract. A deliverable may be a completed product, or it may be a completed step or component of a product. See *consideration, deliverable, milestone*.

Direct contract

A direct contract is a contract between a vendor and the end user, as opposed to a subcontract, which is a contract between a vendor and another vendor that is not the end user. A vendor that holds a direct contract is variously referred to as agency of record, employer of record, general contractor, original contractor, and prime contractor.

Direct contractor

A direct contractor is an outside vendor that contracts directly with a client to provide technical or professional services. Recruiting

firms, staffing firms, contract employment agencies and temp agencies are examples of direct contractors that provide the services of individuals who are specifically identified in a contract between the direct contractor and the client. The individual who actually performs the work may be:

- The direct contractor himself or herself
- A contract employee of the direct contractor
- A subcontractor.

A subcontractor is a vendor that contracts with the direct contractor to provide technical or professional services. For example, an independent contractor who contracts through a direct contractor to perform work for the client is a subcontractor. Subcontractors can themselves have subcontractors, and so on ad infinitum. Synonyms for direct contractor are: agency of record, employer of record, general contractor, original contractor, and prime contractor.

Disability insurance

Also referred to as disability income protection insurance, disability insurance comes in two varieties, short term and long term.

Short term disability (STD) pays a percentage of your salary if you become temporarily disabled, meaning that you are not able to work for a short period of time due to sickness or injury (excluding on-the-job injuries, which are covered by workers compensation insurance). A typical STD policy provides you with a weekly portion of your salary, usually between 1/2 and 2/3 for 13 to 26 weeks. The elimination period is usually between 0 and 8 days after the onset of disability. Some states, for example California, include STD premiums as a standard employee-paid payroll tax.

Long term disability (LTD) pays a percentage of your salary if you become permanently disabled, meaning that you are not able to work for an extended period of time ranging from months to years. A typical LTD policy provides you with a monthly portion of your salary, usually between 1/2 and 2/3 up to age 65, after which age the benefit is reduced. The elimination period is usually either three or six months.

Divide-by-1000 rule of thumb

The divide-by-1000 rule of thumb is a simple algorithm for converting an annual salary into an equivalent hourly billing rate.

An annual salary represents the *minimum* equivalent annual earnings after expenses that a Contract Professional must earn in order to remain on a par with a salaried employee having equivalent skills and experience. Thus, you may calculate an equivalent hourly billing rate by taking a representative annual salary and adding to it the actual costs of running your business. This represents the total annual compensation or billing revenues that you

must receive in a year. Next, divide the total annual compensation by the actual number of hours you expect to bill during the year. This exercise will generally produce an hourly billing rate that is approximately 1/1000th the annual salary. This relationship is referred to as the divide-by-1000 rule of thumb.

E

E-mail discussion groups

The Internet is host to thousands of e-mail discussion groups, whereby users place themselves on electronic mailing lists. Mailing list software automatically distributes an e-mail message from one member of a list to all other members on that list. Thousands of lists in the form of digests, electronic journals, discussion groups and the like are available covering every imaginable topic.

E-mail list

The list of subscribers to an e-mail discussion group or newsletter.

E-mail newsletters

An e-mail newsletter is like a one-way e-mail discussion group. An e-mail newsletter is sent to all members of a subscription list, but unlike a discussion group the members may not reply. Large lists are managed by mailing list software that automatically subscribes and unsubscribes list members and checks for duplicate entries.

Employee

A worker employed for wages or salary by another entity that is required to pay certain government mandated payroll taxes out of pocket and also collect and pay additional government mandated payroll taxes plus withholding taxes from the worker's wages.

At the end of the year every employer submits an IRS Form W-2 to the IRS for every worker they employed during the year. The W-2 form reports gross wages paid to the employee, and in this regard it is similar to IRS Form 1099-MISC. Additionally, the W-2 form also reports federal, state, and local taxes withheld from the employee's paycheck.

The W-2 form distinguishes a bona fide employee from an independent contractor. Employees receive a W-2 at the end of the year; independent contractors do not.

Employee benefits

All benefits provided or made available to employees by an employer, including group life insurance, health insurance, dental insurance, short term and long term disability income protection insurance, sick leave, annual leave, educational benefits, and pensions. Employee benefits may be provided by practice or written policy, or through an employee benefit plan.

Employee Retirement Income Security Act of 1974 (ERISA)

ERISA is a federal law that was passed to protect the pension rights of employees. By and large, it provides a single federal standard for employee benefits that ensures that employees receive the pension benefits and other benefits that were promised by their employers. ERISA and associated provisions of the Internal Revenue Code ensure that tax-favored pension plans do not favor the highest-paid employees over rank-and-file employees. Under ERISA, pension plans include any form of deferred compensation such as deferred profit-sharing, stock purchasing, savings plans, as well as pension plans. ERISA also covers "employee welfare benefit" plans, including all forms of health care, life insurance, prepaid legal services, and both long and short term disability insurance.

Employer

An employer is an entity that controls the work of one or more paid workers. Additionally, an employer collects and pays payroll taxes and income tax withholdings. Another name for employer might as well be "tax collector" because collecting and paying taxes on your behalf is what makes someone who pays you an employer and not a client.

Employer Identification Number (EIN)

The Federal Employer Identification Number (FEIN) is a nine-digit taxpayer identification number assigned by the IRS for businesses, estates, and trusts. Sole proprietors may use their Social Security number as their FEIN. All other businesses must obtain a separate FEIN. To obtain an employer identification number, you must complete IRS Form SS-4, Application for Employer Identification Number.

Each state requires a separate State Employer Identification Number. The State EIN is used to identify the business for the purpose of submitting state income tax withholdings and state payroll taxes.

Employer of record

Employer of record is the general term describing any third-party employer such as a temporary staffing agency, professional employment organization (PEO), contract employment firm, recruiting firm, or similar business that has a contract with a client or with another agency to provide the technical or professional services of a specified individual, in which that individual is an employee of the agency. The term is used in the same context as the term agency of record, in which case the agency provides the technical or professional services of an independent contractor. See *agency of record*, *direct contractor*, *third-party employer*.

Employment agency

Any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person. Examples are staffing agencies, placement agencies, temporary help agencies, contract employment agencies, and recruiting firms.

Employment agreement

An agreement or contract between an employer and an employee that specifies the rights and obligations of each party to the agreement.

Employment contract

See *employment agreement*.

Entire agreement clause

A contract clause stating that the entire agreement between the parties is contained in the written contract itself. An entire agreement clause seeks to prevent the parties of a contract from being liable for oral agreements, side agreements, attachments, statements, or other representations that are not expressly included in the written contract. An entire agreement clause does not preclude the parties from subsequently changing or amending the contract by written agreement, signed and dated by all parties to the contract. See *attachment, contract, side agreement*.

Equal Employment Opportunity Commission (EEOC)

The EEOC is a federal agency that was created by the Civil Rights Act of 1964 to administer and enforce that Act's prohibitions against discrimination in the workplace. Companies must comply with EEOC rulings and requirements when dealing with staffing agency temps under the company's supervision.

Errors and omissions insurance (E&O)

Also referred to as professional liability insurance and malpractice insurance. E&O insurance provides coverage for liability resulting from errors or omissions in the performance of professional duties. Basic E&O coverage pays your defense costs if you are sued for negligence. Better policies also cover (at least partially, depending on your policy) your costs if you are found liable and have to pay damages.

Estimated Taxes

Individuals and corporations who have major sources of income from which taxes are not automatically withheld generally pay estimated taxes at intervals throughout the year. Most individuals who pay estimated taxes send them to the IRS and to their state's tax agency four times a year.

Exchange

See *job board*.

Executive recruiting firm

Essentially synonymous with permanent placement recruiting firm. Used to describe recruiting firms that specialize in management and executive level placements. See *permanent placement recruiting firm*.

Exempt employee

An exempt employee is one that the Fair Labor Standards Act (Fed Wage/ Hours Act) defines as either an executive, administrator, professional or outside sales person whose salary level and job content meet the strict requirements of the law and, therefore, are not required to be paid overtime. See *employee, nonexempt employee, overtime*.

Expense reimbursement

A business may reimburse its employees with tax-free dollars for out-of-pocket, business-related expenses provided that they conform with the provisions of an IRS-compliant accountable plan drafted by the business. Employees must *account* for the business-related expenses with original purchase receipts and valid billing statements.

Expense reimbursement form

The form on which an employee records out-of-pocket, business-related expenses for reimbursement by the employer with tax-free dollars.

Extension clause

Terminology in a contract that specifies the conditions by which the contract may be extended. See *contract extension*.

F

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) is a federal law that establishes minimum wage, overtime pay, record-keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. FLSA guarantees a worker's right to be paid fairly.

Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act is a federal law that requires employers with 50 or more employees to provide an employee with 12 weeks of unpaid leave during the year for the birth or adoption of a child, family health needs, or personal illness. Under FMLA employers must let employees return to the same or similar position that they held before taking the leave.

Federal employer identification number (FEIN)

The federal employer identification number (FEIN, or simply EIN) is a nine-digit number (for example, 12-3456789) assigned to sole proprietors, partnerships, limited liability companies, corporations, estates, trusts, and other entities for filing and reporting purposes. Note the placement of the dash after the second digit. In contrast, a nine-digit Social Security number has dashes after the third and fifth digits (for example, 123-45-678).

Individual employees, and sole proprietorships with no employees, use their 9-digit Social Security number to identify themselves on tax forms, checks, and other communications with the federal government. All other business entities, including one-person limited liability companies and one-person corporations, must obtain a federal EIN. Some banks require a sole proprietorship to obtain an EIN before the bank will open a business bank account. An EIN is also required when a sole proprietor opens a Keogh plan.

If your business has employees it must also obtain a state employer identification number for reporting state unemployment taxes. See *IRS Form SS-4* and *State employer identification number*.

Federal withholding

Federal withholding is the federal income tax withheld by the employer from an employee's gross payroll and submitted to the IRS. Federal withholding is reported on IRS Form W-2 at the end of the year. See *IRS Form W-2, withholding taxes*.

FICA

FICA is short for Federal Income Contributions Act, the law that requires employers and employees to pay Social Security and Medicare taxes. One-half of FICA taxes is paid by the employer, and one-half is paid by the employee. Self-employed individuals pay both halves because they are both employer and employee. FICA taxes are *payroll* taxes because they are calculated as a percentage of the employee's payroll.

FICA – Medicare

FICA - Medicare is the portion of FICA taxes earmarked for Medicare. The tax rate is 1.45% of gross payroll. There is no wage cap on this tax.

FICA – Social Security

FICA - Social Security is the portion of FICA taxes earmarked for Social Security. The tax rate is 6.2% of gross payroll. The wage cap for payment of FICA - Social Security is set each year by the IRS. The wage cap for 2001 is \$80,400, above which no tax is owed.

Fictitious name

Any business name that is an assumed name and different from the legal name of the business's owner. Often referred to as a D.B.A., for "Doing Business As." A name is considered fictitious if it does not contain the business owner's surname, or if it contains words other than those in the owner's full name. For example, if the owner's name is Sally Smith, the names "Acme Java Jockeys," "Sally Smith Consulting Services" and "Sally Smith & Company" are D.B.A.s or fictitious names.

Fictitious name statement

Business owners must file a fictitious name statement (usually with their local county) if the business goes by a name other than the legal name of the business's owner. The fictitious name statement is used to register a fictitious business name with the county recorder. There is small filing fee and an additional charge to publish the fictitious name statement in a local paper.

A properly filed fictitious name statement lends credibility to the claim that an individual worker is an independent contractor and not an employee of the client company.

Finder's Fee

The fee paid by a Contract Professional, or by the Contract Professional's employer of record, to an individual or talent agency for successfully referring new business. The fee paid to a talent agent, such as a literary agent, actors agent, or marketing agent, is a finder's fee, and is typically 10% of collected revenues.

Fixed Bid

An offer to produce a deliverable for a set amount of money. See *deliverable, project, project based billing*.

Fixed Bid Contract

A contract that specifies a set price for a completed deliverable. See *project, project based billing*.

Form of business

The formal legal status of a business. The primary forms of business are sole proprietorship, partnership, limited liability company, and corporation. The form of your business has consequences with respect to your taxes and to the level of protection you have from lawsuits and creditors.

Free agent

This term dates from 1955 when the baseball pitcher Catfish Hunter won the right to negotiate freely a new contract with any team. Today, the term is applied broadly to include self-employed individuals who sell their services under contract to companies and organizations. Free agents include sole proprietors, one-person corporations, consultants, freelancers, temporary workers, home-based business people, independent contractors, solo prac-

tioners, and operators of micro-businesses. See *freelancer*.

Free agency

The state of being a free agent.

Freelance

To operate as a free lance or free agent. Of, relating to, or being a freelancer, as in freelance writer, freelance work.

Free lance

Free lance is a synonym for freelancer.

Freelancer

Freelancer is another name for free agent. The term apparently derives from the medieval practice of giving a free lance to mercenary soldiers. A freelancer is a person who acts independently without being affiliated with or authorized by an organization, or a person who pursues a profession without a long-term commitment to any one employer.

Full-time employment

Generally speaking, full-time employment means working at least 32 hours per week at a salaried, fully-benefitted job. By contrast, part-time employment means working less than 32 hours per week, and temporary employment means working full or part-time for an indeterminate time. Part-time employment is frequently hourly-paid with minimal if any employee benefits. Temporary employment is almost always hourly-paid with no employee benefits.

Fully loaded labor cost

The fully loaded labor cost of an employee is the direct cost of labor (e.g., hourly pay, or annual salary) plus appropriate load factors consisting of all the overhead costs associated with the care and maintenance of an employee. For fully benefitted employees in a mature company the fully loaded labor cost can easily reach 1.3 to 1.5 times the direct cost of labor. In other words, if your annual salary is \$100,000 per year, it is likely that your employer must pay a total of \$130,000 to \$150,000 to support you as an employee. Contract Professionals must pay the load factors out of pocket. Thus, if you want annual gross earnings of \$100,000 you will have to set your billing rate such that your total billings for the year total \$130,000 to \$150,000.

Functional resume

See *resume*.

FUTA

FUTA is short for Federal Unemployment Tax Act, the law that establishes federal unemployment taxes. Federal unemployment tax is assessed on the first \$7000 of wages, and is paid by the

employer. The basic rate is 6.2% of gross wage, but employers receive a credit of 5.4% if they pay their state unemployment taxes in full and on time. Consequently, FUTA tax is usually just 0.8% of gross wage, or \$56 per year per employee. See *unemployment insurance, state unemployment insurance*.

G**Gatekeeper**

A gatekeeper is a staffing agency that is hired by a company to qualify and manage the company's contingent workforce. Gatekeepers act as prime contractors through which other staffing agencies and IRS-compliant independent contractors must subcontract in order to provide contract services to the client. Gatekeepers also act as an employer of record for Contract Professionals who do not comply with the IRS common law factors for independent contractor status. The term vendor on premise is often used to describe the gatekeeper role. In some respects a gatekeeper is like a captive pass-through agency. Most gatekeepers add their handling fee on top of the subcontractor's billing rate. Others take their fee out of billing rate. See *vendor on premise, pass-through agency*.

General contractor

See *Direct contractor*.

General liability insurance (GL)

General liability insurance coverage protects the insured from claims arising out of the insured's liability for bodily injury, property damage, personal injury, or damage caused by ownership of property, manufacturing operations, contracting operations, sale or distribution of products, and the operation of machinery, as well as professional services. Clients frequently require that their vendors carry at least \$1 million in general liability insurance. Because GL coverage is a "significant investment in one's business" the IRS is less likely to re-classify an independent contractor with adequate GL coverage as an employee of the client.

Gig

A temporary contract assignment or project. In the entertainment industry a job of short duration is often referred to as a gig. See *contract assignment, project*.

Governing law

Also referred to as choice of law. Governing law in a contract refers to which state's law will apply in a lawsuit. Governing law may be controlled by a clause in the contract, or by other factors such as where the parties live or where the contract is carried out. See *jurisdiction*.

Gross earnings

Gross earnings equals a business's gross revenues minus expenses. Generally, this is the amount subject to federal and state income taxes. Independent contractors pay taxes on their gross earnings. Employees pay taxes on their gross wage.

Gross wage

Gross wage is the hourly pay or salary earned by an employee before deductions. It is the amount reported on IRS Form W-2 in box 1 under "wages, tips, other compensation". Your gross wage is the basis for calculating payroll taxes and income tax withholdings. Your net pay, or take-home pay, equals your gross wage minus the employee's share of payroll taxes, state and federal income tax withholdings, and any additional deductions such as employee's contribution to a tax-deferred retirement savings plan, and employee's contributions for group insurance premiums and other employee benefits. See *salary*.

Group insurance policy

A group insurance policy is an insurance policy taken out under the auspice of a sponsoring group. The qualifying group may be the employees of a company or the members of an organization. "Group rates" for group insurance policies are based on the experience rating of the entire group, and are typically lower than individual rates for comparable insurance purchased "on the street." Group health insurance for employees is "guarantee issue", meaning the policy is issued without medical underwriting of the individual employee's medical history. In general, group insurance policies have more favorable coverages than individual policies, and underwriting standards are less severe. Examples of group insurance include health insurance, dental insurance, vision insurance, life insurance, long term disability income insurance, and long term care insurance.

Guild

A professional association of people with similar interests or pursuits. Derived from the term for a medieval association of merchants or craftsmen. Examples are: The HTML Writers Guild, Writers Guild of America, Graphic Artists Guild, Screen Actors Guild, Directors Guild, National Lawyers Guild, Newspaper Guild, Software Contractors' Guild.

Guru

Guru is a Sanskrit word meaning a teacher of a specific skill who is also considered to be an expert in that skill. A guru is very highly revered. In ancient Hindu literature, it is said the four most important people in one's life are Matha (mother), Pitha (father), Guru (teacher), and Thavim (God). By extension, guru has come to mean one who is an acknowledged leader or chief proponent, a

person with knowledge or expertise, an expert.

H

Health benefits

Insurance benefits paid under a health insurance plan to cover the costs of health care. The term is often used as a catchall for medical insurance, dental insurance, vision insurance, and long-term care insurance.

Hold harmless clause

See *indemnification clause*.

Home office

As the name implies, a home office is an area of the home dedicated to conducting business. A home office may be your dining room table, a nook in the kitchen, a desk in your bedroom, or a spare room equipped with a dedicated phone line, high-speed internet connection, computer, printer, fax, desk, ergonomic chair and keyboard, and all the other accoutrements of a fully equipped office.

Hourly billing

Charging the client for each hour of work.

Hourly billing rate

The amount of money a professional charges the client for each hour of work.

Hourly contractor

A Contract Professional who charges the client for each hour of work.

Hourly employee

A regular employee who is paid an hourly wage by the employer for each hour of work. See *gross wage*, *hourly wage*.

Hourly pay

See *hourly wage*.

Hourly pay rate

Equivalent to an hourly wage. Temp agencies and recruiting firms make their profit on the spread between the hourly pay rate and the hourly billing rate that they can charge the client for your direct consulting services. By focusing on the hourly pay rate, and refusing to disclose the hourly billing rate, an agency can hide the true cost of its job matching and employer of record services. See *hourly billing rate*, *hourly wage*.

Hourly wage

Compensation paid by an employer as gross wage to an hourly

employee. See *gross wage*, *hourly employee*.

Hourly worker

Any worker who is paid for each hour worked.

I

I-9 form

The I-9 form must be completed for all employees, whether citizen or noncitizen, in order to show evidence of the employee's eligibility to work in the United States. The employee must submit documentation that established both identity and employment eligibility.

Incidental Damages

See *damages*.

Incorporated contractor

A Contract Professional who is the sole shareholder and sole employee of a corporation. A one-person corporation.

Incorporation

To form into a legal corporation. Forming a corporate business entity.

Indemnification Clause

Also referred to as a hold harmless clause. Indemnification is a contractual arrangement by which one party assumes the liability inherent in a situation, and thereby relieves the other party of responsibility. For example, a client may seek indemnification against the financial consequences of a defective software deliverable. Clients frequently require that their Contract Professionals carry general liability insurance and errors & omissions insurance for this purpose. See *general liability insurance*, *errors & omissions insurance*.

Independent contractor

The IRS recognizes two types of worker status for tax collection purposes: employee and independent contractor. An independent contractor is any worker or entity for hire that is not an employee. Independent contractors may be sole proprietorships, partnerships, limited liability companies, or corporations. Most technical and professional consultants are either sole proprietorships or one-person corporations. These are the two business forms that we usually associate with *individuals* who operate as independent contractors. There is some disagreement about the precise definition of an independent contractor. Some authors restrict the term to individuals working as an independent business. Others include all businesses ranging in size from a one-person operation to the

largest mega-corporation.

Independent consultant

An independent consultant is a consultant who works independently of a consulting firm or staffing agency. An independent consultant has the freedom to contract directly with their client or select their own employer of record to contract with their client. A free agent, freelancer, or independent contractor. Contrast with *captive consultant*, *captive contractor*, or *captive employee*.

Independent job board

See *job board*.

Independent professional

A free agent, freelancer, or independent contractor.

Injunctive relief

Injunctive relief is a court order requiring a person to perform, or to refrain from performing, a designated activity. Staffing agency contracts often contain an injunctive relief clause for the purpose of preventing a contractor or subcontractor from soliciting a client's business in violation of a blanket noncompete agreement. Injunctive relief is invoked when monetary damages are not the appropriate remedy to compensate for loss.

Internet

The Internet is an electronic communications network that connects computer networks and organizational computer facilities around the world. The World Wide Web is a part of the Internet designed to allow easier navigation of the network through the use of graphical user interfaces and hypertext links between different addresses.

Internet forum

See *Bulletin Board System*

Invoice

An itemized statement, in greater or lesser detail, submitted to the client by a Contract Professional or other vendor, specifying the work done, the prices for the work, and the terms of payment. A bill.

IRS Form 1099-MISC.

Companies use this form to report to the IRS payments over \$600 paid to unincorporated independent contractors. Companies do not have to prepare Form 1099-MISC. for corporations. Many companies make it a practice to prepare Form 1099-MISC. for all their vendors, even when it is not required.

IRS Form 1099-MISC. states the client's (payer) name, address and tax identification number. It also states the independent contractor's (recipient) name, address and tax identification number.

IRS Form 1099-MISC. reports total non-employee compensation in Box 7. Backup withholding is reported in Box 4 only if the client withheld a 31% income tax assessment because the independent contractor failed to supply a Social Security number or valid tax identification number. See *Backup withholding*.

IRS Form SS-4

Use Form SS-4 to apply for a federal employer identification number (FEIN, or simply EIN). See *Federal employer identification number*.

IRS Form SS-8

This form is titled "Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding". You can ask the IRS to make a determination as to whether an employer-employee relationship exists by filing Form SS-8. If the IRS finds that an employer has incorrectly treated you as an independent contractor the employer may be liable for the social security and Medicare tax withholding that the employer failed to withhold and pay.

IRS Form W-2

Employers must deduct applicable local, state and federal income taxes as well as payroll taxes from their employee's pay. Total wages and withheld taxes are reported on IRS Form W-2, Wage and Tax Statement, and given to the employee at the end of the year. Employees file a copy of IRS Form W-2 with their local, state and federal income tax returns. Companies give a Form W-2 to their employees. They do not give a Form W-2 to independent contractors. See *withholding taxes*.

IRS Form W-4

Employees use IRS Form W-4 to indicate how much federal income tax they want their employer to withhold from their pay. Employees may specify a fixed dollar amount and/or a number of allowances. See *withholding taxes*.

IRS Form W-9

This form is titled "Request for Taxpayer Identification Number and Certification". Independent contractors are required to give their clients a valid tax identification number (TIN) at the beginning of the client-vendor relationship. IRS Form W-9 is used for this purpose. Sole proprietors may submit their Social Security number or a Federal Employer Identification Number (FEIN) if they have one. All other independent contractors must submit a valid FEIN. If an independent contractor fails to provide a valid TIN, the client is required to withhold 31% of what they owe the contractor as an assessment for income taxes. This assessment is called backup withholding. In practice a client company should never engage the services of an independent contractor, or any other vendor for that

matter, without first obtaining the vendor's TIN. See *backup withholding, taxpayer identification number*.

J

Job bank

See *job board*.

Job board

A job board is a website that lists job openings and contract positions. Usually companies or agencies pay a fee to the owner of a job board in order to post their open positions there. Also called a job bank.

Job boards fall into four general categories:

- **Independent job boards:** Independent job boards are not directly involved in the hiring process. Job hunters contact the listing parties directly. Listing parties may be companies (end users) or agencies (middlemen). Contractor-friendly job boards let you filter out agency listings, or at least they identify agency listings so that you can avoid wasting your time talking to expensive, third-party recruiters.
- **Company job boards:** Company job boards are company career pages on the Internet. Here you will find job openings that companies post on their own web pages. Independent job boards often point to company job boards where you can view all jobs posted by a particular company.
- **Exchanges:** An exchange is an online job matching site. Exchanges are places where companies post jobs and candidates post resumes. Some exchanges specialize in contract positions. Some exchanges operate as auctions where contractors may bid on jobs (better for companies) or companies may bid for contractors (better for contractors). A few exchanges charge to post your resume. Most exchanges have some form of automated job matching and notification service. *Contractor-friendly* exchanges exclude agency listings.
- **Agency job boards:** Agency job boards are like company job boards, except that all the postings are for jobs where the agency owns the contract if the company or another agency hires you as a contractor. Avoid agency job boards.

Job posting site

See *job board*.

Job loyalty

See *job security*.

Job security

Job security is an urban myth. The myth of job security owes its origin to the common misconception among employees that they are somehow *entitled* to keep their employment with a given company in perpetuity. In fact, there is no job security. Employment with a given company is *not* an entitlement, and the right to continued employment is a myth. Another urban myth is that of job loyalty. Job loyalty arises from the misconception among many employees that if they show loyalty to their employer, their employer will reciprocate with loyalty toward the employee. As Dan Pink points out in his enlightened book *Free Agent Nation*, conventional wisdom dictates that workers trade loyalty for security, when, in fact, a more realistic assessment shows that workers instead trade talent for opportunity.

Jurisdiction

Jurisdiction refers to the geographical area over which a court or government body has the power and right to exercise authority. As with governing law, jurisdiction may be controlled by a clause in the contract, or by other factors such as where the parties live or where the contract is carried out. See *governing law*.

K

Keogh plan

A Keogh plan is a federally approved, defined-contribution retirement savings program that permits small-business owners and self-employed workers to set aside savings on a tax-deferred basis. Keogh plans have higher savings limits and more administrative requirements than other retirement plans commonly available to small-business owners and self-employed workers. The maximum contribution for 2001 is 25% of gross earnings (gross wage) up to \$35,000 a year. This is essentially the same maximum contribution as a 401(k) retirement savings plan.

Kill fee

Also called rejection fee. A kill fee is partial compensation given to a Contract Professional for work that the other party does not use, or to compensate a Contract Professional for the premature termination of a contract assignment. Also, an early termination penalty. See *termination clause*.

L

Labor load

Labor load consists of all the overhead costs associated with the care and maintenance of an employee. For fully benefitted

employees in a mature company the labor load can easily reach an amount equal to 30% to 50% of gross wage. In other words, if your annual salary is \$100,000 per year, it is likely that your employer must pay a total of \$130,000 to \$150,000 to support you as an employee. The fully loaded labor cost is your gross wage plus the labor load.

Leased Employee

Leased employees are *co-employed* by the company where they work and also by an employee leasing company. Essentially, the company outsources the HR function to an outside party, such as a Professional Employment Organization, to provide recruitment, payroll, and benefits administration for an entire *block* of the company's regular, full-time employees. In this regard, leased employee's differ from agency temps and contract employees. Unlike leased employees, agency temps and contract employees work for the client under individual contracts or purchase orders that specify a limited duration of employment.

Legal consideration

See *consideration*.

Legal Representatives, Successors and Assigns

Contracts commonly contain language similar to the following: *"This agreement shall be binding upon and inure to the benefit of the parties, their legal representative, successors, assigns, and personal representatives."* These are nonparties to a contract who may acquire or exercise rights under the contract through inheritance or acquisition, or through other means.

Letter of agreement

An informal contract in the form of a letter. See *contract*.

Limited liability company (LLC)

The limited liability form of business affords most of the protection of the corporate form, but with simpler reporting requirements, and generally lower fees. Like shareholders of a corporation, LLC members are protected from personal liability for business debts and claims. As with sole proprietorships, partnerships, and S-corporations the business income of an LLC passes through the business to each LLC member, who reports their share of profits or losses on their individual income tax returns. Each LLC member makes quarterly estimated tax payments to the IRS. An LLC may have a single member in all states but Massachusetts and the District of Columbia.

Limited liability partnership (LLP)

A limited liability company with more than one member. Some states reserve the designation LLP for professionals, such as lawyers, accountants, architects and health care providers.

Litigation

Litigation is a judicial proceeding by which parties seek to settle a dispute in the courts through a lawsuit or a judicial contest. In addition to litigation, parties to a contract may seek a settlement through arbitration or mediation. See *arbitration, mediation*.

Long term disability insurance

See *disability insurance*

Loyalty

See *job security*.

M**Margin**

The margin is the spread between the pay rate and the billing rate expressed as a percentage of the billing rate. The margin represents the fee charged by a contract employment agency (recruiting firm) to place you with a client and then payroll you as the agency's employee. Margins charged by recruiting firms are almost never lower than 35%, and too frequently they exceed 50%. If a recruiting firm pays you \$60 per hour and bills the client \$100, then the margin is $[(\$100 - \$60) / \$100] = .40$ or 40%.

Do not be fooled by agencies that calculate their margin based on the loaded labor rate (pay rate plus taxes, benefits, and administrative overhead). This approach makes the margin appear to be much smaller than it really is. Calculate your own margin by asking the agency or your client for the billing rate. When you know the billing rate you can subtract your pay rate to arrive at the true margin. See *markup*.

Marketing agent

See *talent agent*.

Marketing broker

See *talent agent*.

Markup

The markup is the spread between the pay rate and the billing rate expressed as a percentage of the pay rate. Retail merchants buy at wholesale and sell at retail. They "mark up" the wholesale rate to arrive at the retail rate. Temporary help agencies and recruiting firms operate like retail merchants. In the contract employment industry the wholesale rate, or *pay rate*, is what the recruiting firm pays you when they buy your contracting services. The retail rate, or *billing rate*, is what the recruiting firm charges when it resells your services to the client. Contract employment agencies make their money on the spread between the pay rate and the billing rate. All things being equal, the greater the spread the more the

agency makes.

Typical markups for contract employees are generally between 55% and 100%. If a recruiting firm pays you \$60 per hour and bills the client \$100, then the markup is $[(\$100 - \$60) / \$60] = .67$ or 67%. See *margin*.

Mediation

An informal, voluntary process in which a neutral third party, a mediator, helps negotiate a mutually-acceptable resolution between disputing parties. Unlike arbitration or litigation, mediation does not impose a binding solution on the parties of the dispute. If the parties cannot agree on an acceptable settlement they may still arbitrate or litigate their dispute. See *arbitration*, *litigation*.

Medicare

See *FICA - Medicare*.

Microbusiness

Microbusiness is an informal term referring to a business entity consisting of one to ten employees, partners, or members.

Middleman

A middleman is an intermediary or agent between two parties. For example, a dealer or agent intermediate between the producer of goods or services and the purchaser of those goods or services. Middlemen present an ethical quandary when they purport to represent both sides. For example, recruiting firms claim to represent both the Contract Professional and the client, but their allegiance is clearly to the client who pays them, which creates a conflict of interest with respect to the Contract Professional.

Milestone

A milestone is a scheduling event, or flag in the workplan, that signifies the completion of a major deliverable or a set of related deliverables. Project based billing is usually based on the completion of major milestones in the progress of a project. See *deliverable*, *project*.

Money Purchase Plan

A money purchase plan is a qualified retirement savings plan that is virtually identical to a 401(k) plan, with the difference being that the employer contributes 100% of the funds. A money purchase plan is therefore a type of profit sharing plan. Combining a money purchase plan with a 401(k) plan makes it possible for employees to set aside pre-tax dollars equal to the federal maximum of 25% of gross wages up to (in 2001) \$35,000 per year.

Multiple submissions

Multiple submission is when a client receives resumes for the

same individual from two or more sources. Most companies throw away multiple submissions to avoid being charged a finder's fee by more than one agency for placing the same individual. Multiple submissions happen when lazy, sleazy, and unscrupulous recruiters submit resumes without authorization by the Contract Professional, or when the Contract Professional submits resumes to multiple recruiting firms. It is especially frustrating when a Contract Professional submits a resume directly to a prospective client only to be told that the client already has a copy in their database that was submitted by a third-party recruiter. Sloppy control over the distribution of your resume can easily result in multiple submissions, which will disqualify you from consideration by most clients.

Mutuality of obligation

Mutuality of obligation means that both parties to a contract promise to provide consideration for an obligation under the terms of the contract. Work for hire is an example of mutuality of obligation in which one party promises to pay the other party in return for a product or service, and the other party promises to provide a product or service in return for payment by the first party. If a contract lacks mutuality there is insufficient consideration to make a binding contract. See *consideration*.

N**NACCB**

Founded in January 1987, the National Association of Computer Consultant Businesses (NACCB) is an association of recruiting firms dedicated to promoting the business success of its individual members. NACCB members are recruiting firms that sell Contract Professionals to client companies. The NACCB is firmly rooted in the mind set of the mid to late nineteen-eighties when consulting jobs were hard to find and recruiting firms still had the upper hand.

NACCB contract

NACCB has developed a suite of copyrighted standard contracts that member recruiting firms can use with client companies, subcontracting agencies, independent contractors, and contract employees. In practice, however, there is no such thing as a *standard* NACCB contract because member firms may modify the contracts pretty much however they want. Consequently, some pretty audacious contract language gets passed off by NACCB member firms as "official, standard" language. Moreover, NACCB firms consistently use the argument that "It has always worked this way" to discourage Contract Professionals from striking out or modifying unacceptable contract language.

Net Days

Net days is the maximum period of time after submission of an invoice during which the client must pay the full amount due. Invoices marked "Payment Upon Receipt" have payment terms of "Net 0". "Net 30" means that the invoiced amount is due and payable within 30 days of submission.

Net earnings

See *net income, net wage*.

Net income

A company's total earnings, reflecting revenues adjusted for costs of doing business, depreciation, interest, taxes and other expenses. Also referred to as net earnings.

Net wage

An employee's take-home pay. The pay actually received by an employee after adding bonuses and deducting from gross wage the employee's payroll taxes, income tax withholdings, and additional payroll deductions such as elective retirement plan contributions, and group insurance premiums. Also referred to as net earnings.

Network

A support system consisting of past, present, and potential colleagues, co-workers, supervisors, subordinates, mentors and mentees, vendors, and clients. Contract professionals build and maintain a powerful, professional network with which they share information and job leads. Contract professionals who develop and maintain a powerful, professional network virtually guarantee that they will have all the contract work they can manage.

Networking

A supportive system of sharing information and services among individuals and groups having a common interest. The process of building and maintaining a powerful, professional network. See *network*.

News group

A discussion group on a specific topic, maintained on a computer network. Participating in newsgroups related to your skill set is an excellent way to keep up to date on industry knowledge and build your powerful, professional network.

Noncompete agreement

Also called a noncompete clause, noncompetition clause, and covenant not to compete. Companies use different types of contract language in an attempt to keep their employees from going to work for the competition. The contract clauses fall into three categories:

- **Nondisclosure**
- **Nonsolicitation**
- **Noncompetition**

Nondisclosure clauses protect the employer from a former employee disclosing proprietary and confidential information to a competitor. Examples are “trade secrets”, customer lists, internal reports and documentation, computer code, design specifications, and the like.

Nonsolicitation clauses protect the employer from a former employee actively recruiting existing employees and clients of the employer for the employee's new company.

Both nondisclosure and nonsolicitation clauses offer reasonable protections against unfair competition. Employees should have no difficulty abiding by such provisions so long as the language is not overly broad and the employee behaves ethically.

Noncompetition clauses are troublesome because they prohibit an employee from working for the competition or for a client or vendor of the competition within an arbitrary radius and time limit. Such clauses are frequently seen in the employment agreements of professionals such as beauticians, accountants, attorneys, and physicians, where one individual may have a dedicated clientele.

For example, it is common in most states, with the notable exception of California, for medical practices to require that member physicians agree not to work within 100 or 200 miles of the original practice for a duration of one or two years. This is because physicians generally have a dedicated clientele, which the practice has developed at great expense. These patients would undoubtedly follow a physician to a new practice resulting in significant loss of income to the original practice.

Temp agencies are notorious in their use of intimidating and overly broad “covenants not to compete”. Aggressive covenants not to compete are routinely included in vendor agreements with subcontracting agencies and independent contractors, and in the employment agreements of staff employees, temporary employees, recruiters, and executive personnel.

Nondisclosure agreement

See *Noncompete agreement*.

Nonexempt employee

A nonexempt employee is one that the Fair Labor Standards Act (Fed Wage/ Hours Act) defines as an employee whose hourly wage or salary level and job content meet the strict requirements of the law and, therefore, qualify to be paid overtime. See *employee, exempt employee, overtime*.

Nonsolicitation agreement

See *Noncompete agreement*.

O

Occupational Safety and Health Act (OSHA)

OSHA is the primary federal law establishing safety standards in the workplace. Under OSHA employers must provide a safe workplace. OSHA mandates that employers inform employees about potential hazards, train them to deal with hazards, and record workplace injuries in a special log. Generally speaking, the client is responsible under OSHA for ensuring the safety of staffing agency employees working under the client's supervision unless the staffing agency provides insight supervision of its employees. Companies are also responsible under OSHA for ensuring the safety of independent contractors working under the general supervision of the client.

Offer and acceptance

Offer, acceptance, and consideration are the three essential elements without which no contract can be formed. The offer represents the terms of a contract. For an offer to be valid there must be serious intent, communication, and definite terms. Acceptance is the agreement that the terms of an offer are acceptable to both parties of the contract. Acceptance occurs when both parties sign and date the contract. For this reason, it is usually difficult to prove acceptance of an oral contract. See *consideration, contract*.

Off-site contract

A contract assignment where the Contract Professional works remotely from the client's facility. For example, working from home.

Older Workers Benefit Protection Act

This is a federal law that makes it illegal for an employer to discriminate against older employees for benefits or to target older employees for layoffs. Under this law an employer must give each employee at least 21 days to consider a waiver not to sue offered by the employer in exchange for early retirement benefits. See *Age Discrimination in Employment Act*

One-person corporation

See *corporation*.

On the beach

On the beach refers to *unpaid* downtime between consulting assignments. The phrase on the beach is certainly appropriate when the downtime has been scheduled in advance as well deserved rest and relaxation. Nevertheless, on the beach is most

often used facetiously to refer to unexpected or unwanted downtime when a Contract Professional is not billing and not being paid.

On the bench

On the bench refers to *paid* downtime between consulting assignments for the salaried employees of consulting firms. The term derives from the practice of consulting firms calling their off-site employees home to work "on the bench" on inhouse projects when off-site consulting projects are not available.

On-the-job training

Training that one receives while working for an employer or client. Informal training outside of the classroom and obtained in the course of one's work. Resourceful Contract Professionals obtain their best training "on the job".

OSHA

See *Occupational Safety and Health Act*.

Outplacement

Outplacement is the process of easing unwanted or unneeded employees out of a company by providing company-paid assistance to help them land new jobs. Outplacement may be motivated by corporate good will toward terminated employees, but a more cynical view holds that the modest cost of outplacement services is well spent as insurance against former employees filing lawsuits for wrongful termination.

Outplacement consultant

Outplacement consultants are hired by companies to help laid-off employees find work elsewhere. They function like career coaches. Companies hire outplacement consultants to demonstrate goodwill and to reduce the risk that downsized employees will sue for wrongful termination.

Outsourcing

Outsourcing is an arrangement by which one company provides services for another company that could also be or usually have been provided in-house. Outsourcing can range from a large contract in which a consulting firm manages an entire project or department to the practice of hiring individual Contract Professionals and temporary office workers.

Outside vendor

See *vendor*

Overtime

The number of hours of work in excess of a standard day (8 hours) or week (40 hours). The Fair Labor Standards Act (Fed Wage/Hours Act) defines overtime and the conditions for payment of

overtime pay to employees. State law may provide for stricter conditions. See *exempt employee*, *nonexempt employee*.

Overtime pay

Wage paid for overtime to qualifying employees. State and federal overtime regulations apply only to employees, including contract employees of staffing agencies. Overtime regulations do not apply to self-employed, independent contractors.

P

Partnership

The basic business form in which two or more individuals share ownership of a business. A partnership is like a shared sole proprietorship. Although a partnership may have employees, the partners, themselves, are not, for employment tax purposes, employees. Partners are owners.

A general partner is a partner who is authorized by the partnership agreement to take actions that legally bind the entire business. A limited partner is an outside investor who is liable only to the extent of the capital that he or she has invested in the business. The general partner of a limited partnership is referred to as the managing partner.

Partnerships are very risky because each partner, with the exception of limited partners, is fully responsible legally and financially for the business dealings of the other partner or partners. When one partner goes bad, gets lazy, or makes poor business decisions, a partnership can be your worst nightmare. Unlike a limited liability partnership or corporation, a partnership does not shield the personal assets of individual partners from lawsuits and other legal challenges against the business. See *business form*, *sole proprietorship*, *limited liability partnership*, *corporation*.

Part-time employment

Generally speaking, part-time employment means working less than 32 hours per week. Part-time employment is frequently hourly-paid with minimal if any employee benefits. By contrast, full-time employment means working at least 32 hours per week at a salaried, fully-benefitted job, and temporary employment means working full or part-time for an indeterminate time. Temporary employment is almost always hourly-paid with no employee benefits.

Pass-through agency

A pass-through agency represents the Contract Professional only after the Contract Professional has first landed a contract assignment. True pass-through agencies have no commissioned recruiters and no marketing overhead, so they can easily operate on a

narrow gross margin.

1099 pass-through agencies operate simply as a billing service for independent contractors. They generally take \$4 or \$5 per hour as their fee.

W-2 pass-through agencies operate as an employer of record. They generally take 20% of collected revenues or less, although some may charge as much as 25% of the billing rate. In all other respects a W-2 pass-through agency is similar to a traditional temp agency. See *1099 pass-through agency*, *W-2 pass-through agency*.

Pay rate

The pay rate is the hourly wage that an employer of record pays to a Contract Professional. By contrast, the billing rate is the hourly fee that an employer of record charges the client. Temp agencies and their ilk make their profit on the spread between the billing rate and the pay rate. For this reason, recruiting firms are loath to reveal to their contract employees what they bill the client, and they admonish contract employees not to discuss their pay rate with clients. This code of silence helps recruiting firms hide the obscene spreads they earn from the direct labors of their contract employees. See *hourly pay rate*, *hourly wage*.

Payroll taxes

Payroll taxes are taxes paid by employers and employees that are calculated as a percentage of the employee's wage (payroll). Hence, the term payroll taxes. Examples of payroll taxes are Workers Compensation tax, FICA-Social Security tax, FICA-Medicare tax, State and Federal Unemployment taxes.

Pension

A pension is a retirement fund for employees. Employers pay into the fund as deferred compensation for the employees' work. See *401(k)*, *defined benefit plan*, *defined contribution plan*.

Per diem

Per diem is Latin, and means "by the day" or "per day". The idea of per diem is to reimburse you with tax-exempt dollars for normal living expenses up to a maximum rate set by the federal government based on location and occasionally time of year. When you are reimbursed by per diem payment you do not have to show receipts for lodging, meals, and incidental expenses if they are under the posted per diem limits. Most contractors simply claim the legal maximum. There are no restrictions on your living arrangements or whether you actually pay for your lodging, meals, and incidental expenses. Per diem greatly simplifies the computing and reimbursement of travel expenses.

Per diem policy is set by the Federal Government. You are eligible for per diem if you are working away from your tax home on a tem-

porary assignment that is contractually limited to less than one year. Per diem is always paid by the day. Per diem has two portions, (1) lodging, and (2) meals & incidental expenses. You can collect per diem up to seven days a week. You cannot collect per diem for days that you are away from the remote assignment on personal travel, or if you return to your tax home.

Permanent placement recruiting firm

A recruiting firm that specializes in the recruitment of permanent, full-time, benefited employees. Permanent placement recruiting firms work for the company, not the candidate, and they typically charge a fee equal to 25% to 30% of the new employee's projected annual salary. There is generally a 90-day replacement or money-back guarantee. Frequently, permanent placement recruiting firms hedge their bets by offering temp-to-perm (contract-to-hire) arrangements during the 90-day replacement period. During this period the prospective employee is typically paid 1/2000th of the promised annual salary, receives no benefits, and is not paid for vacation days, sick days, and national holidays. Also called executive recruiting firm or contingent recruiting firm.

Permatemp

A permatemp is an agency temp who works on long-term, temporary assignments lasting a year or more. Hence, *Perma-temp*, short for permanent temp. Employers use permatemps instead of hiring full-time employees to lower overhead costs for health insurance and retirement benefits. Retaining workers as permatemps is extremely risky, and companies that do so are likely to have government agencies and class action lawyers reclassify the long-term temps as common law employees of the client company with disastrous financial consequences.

Personal time off

See *sick leave*.

Piercing the veil

Piercing the veil of limited liability refers to the judicial doctrine that allows an individual plaintiff or government agency to hold corporate officers and directors personally liable for damages caused by a corporation under their control. Piercing the veil is allowed when it is determined that the officers have acted intentionally and illegally, or when their actions exceeded the power given them by the company's articles of incorporation, or when they have failed to properly maintain the corporation. See *corporation*.

Pimp

A pimp is a man who solicits clients for a prostitute. The term is often applied derogatorily to recruiters. However, using the term to describe a third-party recruiter of Contract Professionals is hardly

fair to pimps. After all, even a prostitute knows the billing rate.

Placement agency

A placement agency finds jobs and contract assignments for workers, usually for a fee. A placement agency may be a marketing agency (talent agency) that works for talented individuals, or it may be a recruiting firm or temporary help agency that works for client companies. See *talent agent*, *recruiting firm*.

Portfolio

A portfolio is a collection of work samples usually used by those in creative fields, i.e. photography, graphic arts, etc., that is used to show off one's skills. It can also be used by anyone who would like to show samples of work to a prospective employer. The portfolio of a technical or professional contractor might contain writing samples, reports, and other documentation, policies and procedures, computer code, letters of commendation, and other non-proprietary output. Mention your portfolio in your cover letter and in your resume. Post your portfolio on your professional website, and link to it from your online resume. Bring a hard copy of your professional portfolio with you to interviews with the client. A portfolio containing samples of your prior work is a powerful, if not essential, marketing tool. See <http://jobsearchcanada.about.com/library/weekly/n112798.htm> and <http://jobsearchtech.about.com/library/weekly/aa081699.htm>

Punitive Damages

See *damages*.

Preferred vendor

A preferred vendor is a company that has previously qualified to do business with another company. Preferred vendors are also called approved vendors. There is nothing special about being a preferred vendor.

It is a common belief, perpetuated by recruiting firms, that a preferred vendor list limits access to the end user. Recruiting firms want you to believe that you are restricted from marketing your contracting services to an end user if either you or your employer of record is not on the end user's preferred vendor list. But this is not necessarily true. Ask yourself, how does a sales organization become a preferred vendor in the first place? It happens because someone in the company wants to make a purchase through a vendor that is not yet on the list. So the company performs the routine process of qualifying the vendor and executing a master contract. And, voila, the seller becomes a "preferred vendor." This is how companies conduct business. Don't let some recruiting firm bamboozle you into thinking that they alone have access to the quality end users. See *approved vendor*.

Primary contract

See *direct contract*.

Prime contractor

See *direct contractor*.

Professional association

A professional association provides professional services to individuals who have similar career interests. Membership may or may not be free. Professional services may include dissemination of information such as articles and newsletters, political and social advocacy, career advice, insurance and financial services, and additional services that promote the interests of the association's members. See *association*.

Professional day

"Professional" employees are exempt from laws requiring overtime pay. This means that their employer can make them work more than eight hours per day as a condition of employment. Although there is no law that specifically defines a professional day, it is generally considered to be twelve hours. A contract professional working side by side with an exempt employee of the client will be paid for every hour worked, whereas the exempt employee will be paid only for the first eight hours.

Professional employment organization (PEO)

A PEO is a type of staffing agency that signs a blanket contract with an employer to recruit, hire, and co-employ a block of workers for the client. Essentially, the client outsources the *entire* human resources function for a defined block of employees to the PEO. PEOs tend to specialize in the employment of low-paid clerical and light industrial staff. PEOs take advantage of economies of scale and specialized systems to provide cost-effective employment solutions for their clients. In contrast to a temp agency, which signs a separate contract for each leased employee, a PEO signs a blanket contract to supply and payroll an entire population of employees. Employment with a PEO is open ended, and is not intended to be temporary. The administrative service fee charged by a PEO to its client is typically between 4% and 6% of the loaded labor cost (salary plus taxes and benefits).

Professional liability insurance

See *errors and omissions insurance*

Professional Network

See *network*.

Profit center

A profit center is an area of responsibility that generates revenues for a company or organization. By contrast, a cost center is an area of responsibility within a company or organization against

which costs are accumulated. Examples of profit centers are Sales Departments and Consulting Divisions, which generate receipts and receivables. Examples of cost centers are Human Resources, Marketing, and Administrative Services, which spend money, but which do not directly generate revenues. See *cost center*.

Project

The term "project" is often used interchangeably with "contract assignment" to describe the work to be done as specified in a contract between vendor and client. Whereas a contract assignment may entail open ended work paid by the hour, a project is generally defined by a set of requirements that define project scope, and milestones that define significant stages leading to completion of the project. See *contract assignment, milestone, project based billing, project-based contract, requirement, scope*.

Project based billing

Refers to billing based on the successful completion of specific project requirements and milestones. Project-based billing is not for the beginner or faint of heart. Uncontrolled scope creep and requirements creep can increase the amount of time required to achieve client acceptance and sign-off. And if the client refuses to accept your work you may never be paid. On the other hand, if you are very efficient and highly skilled then project based billing can be highly profitable. When billing by the project it is important to resist the temptation to deliver the project much ahead of schedule, or else the client may perceive that you have overcharged for your work. This falls under the general category of "management of expectations." See *project, requirement, scope creep*.

Project based contract

A project based contract is a contract that defines the work to be done, as well as payment for successful completion of the work, in terms of specific project requirements and milestones. See *project based billing*.

Purchase order (PO)

A purchase order or PO is an offer to purchase commodities, equipment or services from vendors. When accepted and signed without change by the vendor a purchase order constitutes a legally binding contract. For this reason a PO should always be reviewed as carefully as a contract. The purchase order is generated by the client's purchasing, or procurement, department. It specifies the quantity, description, price, delivery date, terms and conditions, payment terms, "ship to" address, and special instructions to the vendor. Once a vendor or Contract Professional has signed a master services contract with the client, additional work may be specified by the issuance of a new PO without the need to renegotiate a new contract.

Q

Qualified pension plan

A qualified pension plan is an employer-sponsored pension or profit sharing plan (such as a 401(k) plan) that is established and maintained by the employer primarily to provide for the payment of benefits to employees over a period of years, usually for life, after retirement. A qualified pension plan “qualifies” for special tax treatment under the requirements of the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA).

A qualified pension plan must be in writing, be permanent, be for the exclusive benefit of employees or their beneficiaries, and not be discriminatory in favor of officers, stockholders, supervisors or higher paid employees. Contributions by the employer to an employee’s retirement savings account are tax-deferred, that is they are not immediately taxed, but are taxed only upon withdrawal. Capital gains on invested funds likewise are not taxed until they are withdrawn from the fund. See *401(k) plan, Employee Retirement Income Security Act of 1974 (ERISA), pension, retirement savings plan.*

Quarterly estimated tax payments

Taxpayers who have income from sources other than employment are required to submit estimated income tax payments on that income at quarterly intervals on dates specified by the IRS.

R

Raise

A raise is an increase in salary or wage. Companies generally give their regular, full-time employees a raise once a year after their annual review. Contract Professionals have the option of giving themselves a raise every time they negotiate a new contract. See *annual review.*

Rate

See *billing rate, pay rate.*

Rate survey

A rate survey is a compendium of representative hourly rates, organized according to profession, geographic region, level of experience, etc. Rates quoted may be:

- Billing rate -- What the client pays directly to an independent contractor or to the contractor’s agency
- Pay rate -- What an agency pays to its contract employee as gross wage.

It is vital that you know whether the rates quoted in a rate survey

are billing rates or pay rates or a mixture of the two. I suspect that in the majority of cases even the compilers of the rate survey don't know what kind of rate data they are compiling. The best single rate survey for teckies is Janet Ruhl's Real Salary Survey at <http://www.realrates.com/>. See *salary survey*.

Reasonable person standard

The reasonable person standard or reasonableness standard is an aspect of contract law that refers to what a hypothetical "reasonable person" would think or do in relation to a contractual obligation. The court always looks at the reasonableness of a contract provision when asked to enforce it.

Reclassification

In the eyes of the IRS and other state and federal agencies an individual worker is either an independent contractor or an employee. The overwhelming bias of government agencies is to classify all individual workers as employees of the businesses that pay them. Whenever possible, the IRS attempts to reclassify independent contractors as employee's of the client, and then collect from the "employer" back taxes, penalties, and interest.

An independent contractor who does not comply with the common law factors that define an independent contractor places the client at risk of having the IRS or another government agency reclassify the contractor as an employee of the client. Likewise, employees of the client who treat an independent contractor like a fellow employee also place their employer at risk. The consequences of reclassification are dire, and they fall much harder on the client than they do on the reclassified independent contractor.

In order to avoid the adverse consequences of reclassification many companies conscientiously avoid direct service contracts with anyone who is working as an independent contractor. Instead, these companies prefer to use contract workers who are employed by a third-party employer of record. See *employee, employer of record, independent contractor*.

Recruiter

A recruiter is anyone who locates and screens candidates for a company. Recruiters have various relationships with the companies they are recruiting for, including:

- Staff HR professional
- Hourly-paid contractor (contract recruiter)
- Employee of third-party recruiting firm

See *contract recruiter, recruiting firm*.

Recruiting

Recruiting is the process of locating and screening candidates for an employer as part of a search assignment. The term refers to

the overall general efforts to bring in either full-time or temporary employees. See *recruiter, recruiting firm*.

Recruiting firm

A staffing agency that engages in recruiting. Recruiting firms are vendors that locate and screen candidates for companies. Recruiting firms may recruit full-time employees or temporary employees or both. In contrast to temp agencies, recruiting firms specialize in locating and placing highly skilled technical and professional workers. If you use a recruiting firm to help you locate a contract assignment you should expect the firm to take 35% to 65% of the billing rate, and require that you become their employee as a condition of taking the contract assignment. Even if you qualify as an IRS-compliant independent contractor, the recruiting firm will insist on signing the contract with the client. Recruiting firms offer minimal benefits to their contract employees. See *recruiter, recruiting, staffing agency, temp agency*.

Reference

A reference is a past or present employer or client who can speak to your character, ability and performance. In reality, because of the fear of litigation, most references limit the information given during a reference check to the bare minimum: Job title and confirmation of dates of employment. Nevertheless, a good reference can be your best certification.

You must take care to protect the identity of your references. Never distribute your references with your resume. Rather, deliver information about your references personally during the interview. And never give your references to a recruiter. Recruiters are notorious for misusing your proprietary, confidential reference information.

Examples of misuse of reference information include:

- Marketing candidates to your references.
- Soliciting job orders from your references.
- Soliciting from your references the names of co-workers, colleagues, and contractors.
- Soliciting business leads from your references.
- Attempting to recruit your references.
- Transferring or copying reference information to locations outside your own file.
- Making reference information available to others not specifically engaged in placing you with an end user.

Misuse of proprietary and confidential reference information by an unethical recruiter can adversely affect your relationship with valued references, and seriously hurt your ability to obtain gainful work.

Reference check

Inquiry made by a prospective employer or client to determine an applicant's character, ability and performance. See *reference*.

Regular employee

See *employee*.

Reimbursable expense

Employers may reimburse their employees for certain work-related, out-of-pocket expenses provided the reimbursements comply with applicable IRS rules and with the company's accountable expense reimbursement plan. An accountable plan is a written policy of the employer governing the reimbursement of work-related expenses. Expense reimbursements under an accountable plan are not part of your income. They are paid with tax-exempt dollars, and they do not appear on your Form W-2. See *accountable plan*.

Release (from contractual obligation)

An agreement, as in a written release, that discharges a party to a contract from a contractual obligation. For example, at the request of an important client most staffing agencies will readily release a contract employee from the terms of a noncompete agreement under the implied threat that the agency will lose future business with the client if it refuses to release the contractor. Releases should always be obtained in writing.

Remedy

See *damages*.

Remote assignment

A contract assignment that is carried out at a remote work site. See *remote work site*.

Remote work site

The term remote work site refers to a work site that is sufficiently far from the worker's tax home that it is prudent for the worker to spend the night. You may qualify for tax-exempt per diem if you work at a remote work site on a temporary assignment. See *off-site contract, per diem*.

Requirement

As defined by the IEEE Standard Glossary of Software Engineering Terminology, a requirement is:

- A condition or capability needed by a user to solve a problem or achieve an objective.
- A condition or capability that must be met or possessed by a system or system component to satisfy a contract, standard, specification, or other formally imposed document.
- A documented representation of a condition or capability as in 1 or 2.

The set of project requirements is what defines the scope of a

project. See *scope*.

Requirements creep

See *scope creep*.

Rescission of contract

Rescission of contract is the voluntary abrogation, annulment, avoidance, or cancellation of a contract by either party upon the occurrence of certain kinds of default by the other contracting party. For example, mutual mistake, fraud, or impossibility. Rescission unmakes or undoes a contract from the beginning, and is not merely the termination of a contract. When a contract is rescinded the parties are relieved of their obligations under the contract.

Restrictive covenant

A restrictive covenant is a term in a contract which prevents someone from doing something during and often for a period following the termination of a contract. Examples of restrictive covenants are contract terms, provisions and language that seek to prohibit competition, solicitation of business and employees, and disclosure of confidential and proprietary information.

Resume

A resume is a key job-hunting tool that you use to get an interview. It summarizes your accomplishments, your education, your work experience, and also reflects your special mix of skills and strengths.

Resume, chronological

Another name for chronological resume is *curriculum vitae*, which means "course of (one's) life" in Latin. This is the traditional format used by academic and professional job seekers. It is the type of resume you learned to write in school, and it is used by full-time job seekers. A chronological resume lists work experience and education in chronological order from most recent to least recent. Consequently, the dominant feature of a chronological resume is a succession of *dates*. Unfortunately, dates on your resume do not indicate how well qualified you are for a given contract assignment. Dates only convey information that is irrelevant, inappropriate, private, and potentially harmful to your career. See *curriculum vitae, resume*.

Resume, functional

A functional resume answers these questions: Who am I? Where am I? What jobs do I do? How well do I do them? Content that does not answer one of these questions does not belong in a functional resume. Dates do not belong in a functional resume, otherwise it would be a chronological resume. Contract professionals should use the functional resume format when marketing their

consulting services to client companies. See *resume*.

Resume posting site

A resume posting site is a website where job seekers can submit their resume to a searchable database. In most cases candidates post their resumes for free. Companies and recruiters usually have to pay to search the resume database. Resume posting sites are usually associated with independent job boards, company job boards, exchanges, and agency job boards. Also called a resume bank. See *job board*.

Resume, scannable

A scannable resume is a resume with minimal formatting that can be scanned into an electronic resume database or electronic resume tracking system. Scannable resumes are recommended for online submission to a resume bank. See *resume*.

Resume, Web-based

A Web-based resume is simply a resume of any format that resides on the Web. See *resume*.

Retainer

A retainer is a fee paid to a Contract Professional to assure that the Contract Professional will be available when services are needed. For example, a contract may specify a retainer of \$1000 for the first ten hours of work performed each month, payable in full even if the client requires less than ten hours of work in any given month.

Retained recruiter

A retained recruiter is a recruiter or recruiting firm that is paid a retainer or fixed fee by a company to recruit against one or more specific search assignments. A retained recruiter typically enters into an exclusive contract with the client company. See *contingent recruiter*.

Retirement savings plan

A fund that is established for the payment of retirement benefits. Funds are contributed to the plan by either or both the employer and the employee. Typically, funds in the plan are tax-deferred, meaning that funds contributed to the account, within allowable limits, and investment earnings from those funds are not taxed until the funds are withdrawn. See *401(k) plan, pension*.

Road warrior

A road warrior is a Contract Professional who specializes in contract assignments where he or she must live and work away from home. Road warriors earn significantly more "take home" pay because they are able to set aside tax-exempt per diem out of their gross earnings. Road warriors may live in campers and fifth wheels, tents, hotels, apartments, or other temporary quarters.

Rule-of-thumb formula

See *divide-by-1000 rule of thumb*.

S

Salary

Salary is a general term denoting the compensation an employee receives for accomplishing the basic responsibilities of the job. Examples are annual salary and hourly wage. The use of the word salary carries with it no specific legal definition, and is not intended to be a determination of FLSA status according to U.S. law. See *annual salary*, *Fair Labor Standards Act (FLSA)*, *gross wage*, *hourly wage*.

Salary survey

A salary survey is a compendium of representative salaries, usually stated in terms of annual salary, organized according to profession, geographic region, level of experience, etc. Although Contract Professionals do not earn an annual salary per se, they can profit from the information published in salary surveys.

A representative annual salary represents the *minimum* equivalent annual earnings after expenses that a Contract Professional must earn in order to remain on a par with a salaried employee having equivalent skills and experience. Thus, you may calculate an equivalent hourly billing rate by taking a representative annual salary and adding to it the actual costs of running your business. This represents the total annual compensation or billing revenues that you must receive in a year. Next, divide the total annual compensation by the actual number of hours you expect to bill during the year. This exercise will generally produce an hourly billing rate that is approximately 1/1000th the annual salary. This relationship is referred to as the divide-by-1000 rule of thumb.

A good place to start for salary surveys is About.com. Go to <http://www.about.com/> and enter the keywords <salary survey>. The best single salary survey for teckies is Janet Ruhl's Real Salary Survey at <http://www.realrates.com/>.

Salaried contractor

Some staffing agencies pay their contract employees an annual wage. This approach accomplishes two ends. First, it gives the appearance that the contract worker is in fact the captive employee of a true consulting firm. Second, it projects the appearance of a secure job. In reality, salaried contractors have no better benefits than any other agency contractor, and they have scarcely any real job security. While it is true that salaried contractors are supposed to be paid between contract assignments, in reality the pay comes out of a grossly bloated profit margin, and the salaried

contractor is usually fired after only a couple weeks of "paid bench time." See *captive employee, consultant, consulting firm, salary*.

Salaried employee

An employee who is paid an annual wage. See *salary*.

Schedule C

Independent contractors report their business income and expenses on IRS Form 1040, Schedule C, Profit or Loss from Business (Sole Proprietorship). Schedule C is like your business's profit and loss statement. This is where you report your business income as well as all associated expenses, such as advertising, auto expenses, insurance premiums, legal and professional services, rent, utilities, and office expenses.

S-corporation

The S-corporation is a special form of corporation in which income is not taxed at all at the corporate level. Instead, income passes to the shareholders where it is taxed as individual income under subchapter S of the Internal Revenue Code. One-person corporations usually adopt the S-corporation form. In many respects an S-corporation has the look and feel of a sole proprietorship, but with the added protection of a corporate veil. The S-corporation form is restricted to corporations with fewer than 75 shareholders. There are also limits on how much an S-corporation can earn before it must convert to the C-corporation form. Other types of corporation are C-corporation, professional corporation, non-profit corporation, and religious corporation. See *corporation, C-corporation, corporate veil*.

Scope

Scope refers to the set of requirements that defines a project. Project scope is defined in the contract or in a purchase order or statement of work associated with the contract. With project based billing it is crucial that project scope is carefully defined, and that all parties to the contract are in complete agreement as to the meaning of each requirement.

Scope creep

Also called requirements creep. Scope creep is the tendency of the client to include additional user requirements that cause a project to expand beyond its original scope. If you are billing by the hour, scope creep is like job insurance because it invariably extends the time needed to complete a project. On the other hand, if you are billing by the project, scope creep will eat you alive. See *project, project-based billing, project-based contract*.

Self-employment

The state of being a sole proprietor or of being employed by one's own company.

Self-employment tax

Employers pay one-half of FICA-Social Security taxes and one-half of FICA-Medicare taxes. Employees pay the other half of these taxes out of their gross wage. Self-employed individuals pay both halves of FICA taxes because they are both employer and employee. See *FICA, payroll taxes*.

Service mark

See *trademark*.

Severability clause

A clause in a contract that stipulates that the contract's parts are severable, such that if one part is found to be invalid it may be severed from the contract without invalidating the remaining parts of the contract. Without a severability clause, a court of law may invalidate the entire contract if it finds that one part is invalid.

Severance pay

Severance pay is a bonus paid by employers to laid off employees. There is no law that compels an employer to pay severance, but an employer is legally bound to pay severance if it is provided for in the employee handbook, employment agreement, or a union contract. Severance payments for professionals typically amount to one or two months gross wage. Executives may negotiate very rich severance packages called golden parachutes. Staffing agencies rarely, if ever, pay severance to their temporary employees.

Sexual harassment

Sexual harassment is any unwelcome sexual advance or conduct on the job that creates an intimidating, hostile or offensive working environment. Sexual harassment is prohibited by the federal Civil Rights Act of 1991 and by state laws.

Shareholder

A shareholder, also called a stockholder, is an owner of a corporation whose ownership interest is represented by individual shares of stock. Shareholders hold annual shareholders' meetings, elect directors, and receive a proportionate share of dividends issued by the corporation. Shareholders of large corporations are referred to as investors. A sole shareholder is the sole owner of a one-person corporation. See *corporation*.

Sick leave

Sick leave is time off from work for illness. There is no law that requires paid sick leave, although it is not uncommon for employers to provide one or two weeks paid sick leave during the year. Most employers provide for a limited amount of unpaid sick leave, and the Family and Medical Leave Act requires that employers with 50 or more employees offer up to 12 weeks per year of unpaid leave for the birth or adoption of a child, family health

needs, or personal illness. Employers often include sick leave under the general category of personal time off. See *Family and Medical Leave Act*.

Side agreement

A side agreement is a change made to the original contract terms that is contained in a separate document. Take care to include language in the side agreement that overrides any “entire agreement” language in the original contract so that the new terms are incorporated by reference into the original contract. Examples of side agreements are contract extensions, and changes to the project’s scope and requirements, however minor they may be. See *entire agreement clause, attachment*.

Sign-on bonus

A sign-on bonus is typically a one-time cash award paid to a job candidate for accepting a job offer with a company. Some companies may offer sign-on bonuses to Contract Professionals, especially when talent is in very short supply.

Simplified employee pension (SEP)

A SEP IRA is a type of retirement savings plan generally used by small businesses. It allows employers to make tax-deferred contributions to individual retirement arrangements (IRAs) for themselves and their employees. Employers must contribute the same amount on a percentage-of-salary basis for themselves and their qualifying employees. Employees may not contribute to their own SEP IRA, but they may fund a Roth or traditional IRA separately. Withdrawal rules for SEPs are similar to those for other IRAs, but contribution limits are much higher.

Short term disability insurance

See *disability insurance*

Skill set

Skill set refers to all the abilities required by a particular job, or all the abilities a person possesses, as in “He wasn’t hired because his skill set had minimal overlap with the requirements of the job.”

Small claims court

Small claims court is a special state court intended to simplify and expedite the resolution of minor disputes involving small claims, usually between \$2000 and \$10,000, depending on the state. Rules of evidence are relaxed in small claims court. Lawyers are usually barred from active participation. There is no jury, and the judge generally issues judgments on the spot with little or no deliberation. A judgment in small claims court carries the same weight as a judgment in any other state court.

Social Security

See *FICA - Social Security*

Sole proprietor

A sole proprietor is the individual owner of a sole proprietorship; a self-employed individual who is not registered as a one-person limited liability company or one-person corporation. Sole proprietor is the default tax status of every American citizen with a Social Security Number.

Sole proprietorship

Sole proprietorship is the default business form of every individual with a Social Security Number. Most independent contractors are sole proprietorships. This is the riskiest business form for at least two reasons. First, this business form offers no protection for the owner against creditors and lawsuits. Second, because formation of a sole proprietorship is virtually automatic, and requires no registration or payment of fees to the state, it is easier for the IRS and other government agencies to reclassify the owner of a sole proprietorship as an employee of its client. In order to avoid the adverse consequences of reclassification many companies conscientiously avoid direct service contracts with sole proprietors.

Sole shareholder

A sole shareholder is the sole owner of a one-person corporation. See *corporation, shareholder*.

Soloist

One who performs a solo musical composition and, by extension, any individual who works alone as a free agent, freelancer, independent professional, sole proprietor, or one-person corporation.

Spam

Spam is a noun and verb that refers to unsolicited copies of the same e-mail message sent to a large number of e-mail addresses or newsgroups. Spam is the digital equivalent of junk mail. Unethical agencies and clueless job candidates often spam corporate HR departments with resumes. This annoying practice is worse than ineffective. It can actually reduce the chance that a company will want to interview the candidate.

Specific performance

Specific performance is the power of a court or an arbitrator to compel a party to carry out a specific contractual obligation. Specific performance is not applicable to personal services contracts, which comprise most of the contracts signed by Contract Professionals. So, while the court or an arbitrator may specify damages for failure to complete a personal services project, it cannot compel the offending Contract Professional to complete the project.

Staffing agency

Staffing agencies, also called employers of record, are organizations that provide outsourced human resources and third-party

employment, meeting requirements specified by a client organization. Examples of staffing companies are professional employment organizations, third-party recruiting firms, contract employment agencies, temporary employment agencies, pass-through services, and umbrella services (also called virtual back offices or virtual corporate offices). See *recruiting firm*, *temporary help agency*, *pass-through agency*, *umbrella service*.

Start date

The date, specified in a contract, that a contract assignment begins.

State withholding

State withholding is the state income tax withheld by the employer from an employee's gross payroll and submitted to the state tax-collecting agency. Not all states levy a state income tax. State withholding is reported on Form W-2 at the end of the year. See *IRS Form W-2, withholding taxes*.

State employer identification number

Businesses that hire employees, including one-person corporations, must obtain a State Employer Identification Number. The State EIN is used to identify the business for the purpose of submitting state income tax withholdings and state payroll taxes.

State unemployment insurance (SUI)

SUI is administered separately by each state. SUI taxes are paid by the employer in all states, and in four states (Alaska, New Jersey, Pennsylvania, Rhode Island) there is also a small contribution from the employee's paycheck. See *FUTA, unemployment insurance*.

Statute of frauds

A common legal doctrine based in English common law and included in many states' laws that requires that certain classes of contracts must be made in writing in order to be enforceable in a court of law. Typically, a statute of frauds requires a written document for contracts longer than one year or involving more than \$5,000 compensation.

Statutory employee

The employment status of a statutory employee is defined by statutes passed by congress, hence the name *statutory*. A statutory employee is neither a regular employee nor an independent contractor, but has elements of both. Examples include certain outside salespersons and delivery drivers.

Like a regular employee, a statutory employees pays only one-half of Social Security and Medicare Taxes, and receives a Form W-2 at the end of the year. Like an independent contractor, and *unlike* a regular employee, a statutory employee reports income and

earnings, and deducts the full amount of business expenses, on IRS Schedule C, Profit or Loss From Business.

Statutory independent contractor

The IRS automatically considers licensed real estate agents and certain direct sellers paid on commission to be independent contractors. Statutory independent contractors do not have to meet the criteria of common law factors because they qualify by statute.

Stock option

A stock option is the right to purchase or sell a stock at a specified price within a stated period. Companies, especially pre-IPO start-ups, often offer stock options to job candidates as an inducement to join the company. You should never accept stock options in lieu of cash compensation, and you should never reduce your compensation in consideration of receiving stock options. Stock options are virtually worthless at issue, and the chance that they will appreciate in value is highly problematical. In general, stock options are reserved for regular employees of the company, but they can be offered to Contract Professionals and other vendors by special resolution of the Board of Directors. Contractors who accept stock options from a client should have the options vest immediately upon completion of the contract.

Subcontract

A subcontract is a contract between a vendor and a general contractor or another subcontractor. See *assignment of rights clause*, *contract*, *delegation of rights clause*, *subcontractor*.

Subcontractor

A subcontractor is a "little flea." To wit:

Great fleas have little fleas
upon their backs to bite 'em,
And little fleas have lesser fleas,
and so ad infinitum.
And the great fleas themselves, in turn,
have greater fleas to go on;
While these again have greater still,
and greater still, and so on.

Surety bond

A surety bond is a three-party agreement in which a surety (a type of insurance company) joins with a second party (the principal) in guaranteeing to a third party (the obligee) the fulfillment of an obligation on the part of the principal. The obligee is the party protected by the bond against loss, and the party to whom a bond is given. For example, a client (the obligee) may require a surety bond from a consultant (the principal) to guarantee a contractual obligation.

Examples of surety bonds include:

- **Bid Bonds:** Bonds which guarantee that a contractor will enter into a contract, if it is awarded to the contractor, at the amount bid and post the appropriate performance bonds. Bid bonds provide financial assurance that the bid has been submitted in good faith, and that the contractor will enter into a contract at the bid price.
- **Contract Bonds:** Bonds designed to guarantee the performance of obligations under a contract. Contract bonds guarantee to the client that the contractor will perform according to the terms of a written contract. Contract bonds protect the client by guaranteeing a contractor's performance and payment for labor and materials.
- **Fidelity Bonds:** Bonds designed to guarantee honesty. Generally, a fidelity bond guarantees honesty of employees. Fidelity bonds cover losses arising from employee dishonesty and indemnify the principal (for example, an employment agency) for losses caused by the dishonest actions of its employees.
- **Fiduciary Bonds:** Bonds which guarantee an honest accounting and faithful performance of duties by administrators, trustees, guardians, executors and other fiduciaries. Fiduciary bonds may be required in the administration of an estate, or the management of affairs of a trust or a ward.
- **Maintenance Bonds:** Bonds that provide for the upkeep of the project for a specified period of time after the project is completed. Maintenance bonds guarantee against defective workmanship or materials, and may include a guarantee of "efficient or successful operation" or other obligations.
- **Payment Bonds:** Payment bonds guarantee payment of the contractor's obligation under the contract for subcontractors, laborers and materials suppliers associated with the project.
- **Performance Bonds:** Performance bonds guarantee performance of the terms of a contract. Performance bonds protect the client from financial loss should the contractor fail to perform the contract in accordance with its terms and conditions.

Take-home pay

An employee's take-home pay is the pay actually received by an employee after adding bonuses and deducting from gross wage the employee's payroll taxes, income tax withholdings, and additional payroll deductions such as elective retirement plan contributions, and group insurance premiums. See *gross wage*.

Talent agent

Talent agents are commonly found in professional sports, entertainment and the arts, and in other high-demand professions. Talented professionals pay talent agents either a flat fee or a percentage of gross earnings (typically 10%) to land assignments, plan career strategies, and assist with contract negotiations. Examples are sports agents, actors' agents, literary agents, and increasingly, contractor marketing agents. Talent agents work for

the talented individuals they represent as opposed to temp agencies and recruiting firms that work for the client. See *broker*.

Tax deductions

Tax deductions are expenses that the government allows you to deduct from your income in order to reduce your overall taxes. Examples of deductions are certain employee business-related expenses, individual deductions for medical expenses, taxes, charity, and other allowed expenses, investor deductions, tax credits for individuals, and self-employed business expenses. Tax deductions provide a powerful way to reduce your taxes. For example, if you are in the 30% tax bracket, then for every \$1 of deductions that you can claim on your tax return you will reduce your tax bill by 30 cents.

Independent contractors can take advantage of many legitimate business expenses that are not available to employees. Consequently, independent contractors stand to take a huge financial hit from lost tax deductions if their client requires that they become the employee of a staffing agency. True umbrella services like P.A.C.E., <http://www.pacepros.com/>, offer a solution to the problem of lost tax deductions because they reimburse their contractors with tax-exempt dollars for legitimate, work-related business expenses.

Taxpayer identification number (TIN)

Your taxpayer identification number is either your Social Security number (SSN) or your federal employer identification number (FEIN). Employees and sole proprietorships with no employees use the SSN. For all other business entities, including sole proprietorships with at least one employee, and one-person limited liability companies and one-person corporations, the taxpayer identification number is the FEIN.

Tax filing status

In the context of contract employment the term "tax filing status" refers to whether an individual worker qualifies as a regular employee of the client or as an independent contractor. Government agencies regularly conduct audits of company financial records and personnel files in order to determine the tax filing status of individual workers. If a worker does not comply with common law factors determining independent contractor status the government will attempt to reclassify the worker as a regular employee of the client. See *employee, independent contractor*.

Technical interview

A technical interview is an interrogation that focuses on the skills required to perform a specific job. The technical interview may be a casual conversation with the project leader and team members, but it can also involve written exams and hands-on demonstra-

tions.

Temp, clerical or seasonal

A clerical or seasonal temp is a temporary worker whose assignments require few specialized skills and training. Clerical and seasonal temp work is characterized by low pay and very short duration, lasting at most a few days or weeks.

Temp, technical or professional

A technical or professional temp works on assignments that require specialized skills and training. In contrast with clerical and seasonal temps, technical and professional temp work is characterized by higher pay and assignments that may last months or even years.

Temp agency

See *temporary help agency*.

Temporary employee

A temporary employee is a regular employee who is employed for a specified duration of time or amount of work. The temporary employee may be employed by a third-party employer of record (e.g., temporary employment agency, contract employment agency, contractor recruiting firm, pass-through agency, or umbrella service), and leased under contract to a client of the employer of record. Or, the temporary employee may be employed directly by the company that uses his or her services. Examples of temporary employees are short-term clerical and seasonal workers, migrant workers, Christmas Santas, inventory takers, piece workers, contract programmers, and others whose basis for employment is limited by time or amount of work.

Temporary employment

Generally speaking, temporary employment means working full or part-time for an indeterminate time. Temporary employment is almost always hourly-paid with no employee benefits.

Temporary employment agency

See *temporary help agency*.

Temporary help agency

A temp agency is a third-party employer of record. The term is usually reserved for firms that employ clerical and seasonal temps, but the term also applies to contractor recruiting firms and other contract employment agencies such as pass-through agencies, and umbrella services that employ technical and professional temps. A synonymous term is temporary employment agency.

Temp-to-perm

See *Contract-to-hire*

Term

A provision in a contract. Also, the stated duration of a contract.

Termination clause

Also called a cancellation clause. A termination clause in a contract specifies the conditions under which an obligation under the contract may be terminated. A termination clause often contains a notice requirement, and may specify a penalty for early termination and/or failure to provide adequate notice.

Termination date

The termination date is specified in a contract between a third-party employer of record and the client. It is the last day that the contract is valid.

Third-party employer

A third-party employer is an employer, other than the client, that employs a temporary worker or Contract Professional. See *employer of record*.

Time of the essence clause

Time is money. Therefore, agreements that require timely performance take the value of time into account. Timely performance may be specified in the contract as a material requirement, allowing the other party to sue if not complied with.

Trademark

A trademark is a word, phrase, logo, symbol, color, sound, smell or other distinctive mark used by a business to identify a product and distinguish it from competing products. A service mark is a distinctive mark that identifies a business service. Trademarks and service marks have virtually identical legal protections. It is not required that a trademark or service mark be formally registered in order to enforce ownership in the courts, but registration strengthens one's claim to ownership in a legal dispute. The US Patent and Trademark Office registers trademarks and service marks that are used in interstate commerce, or that affect interstate commerce. Individual states register marks that are used in intrastate commerce.

Trade name

A trade name is the official name of a business that it uses, for example, on its letterhead, legal documents, contracts, and bank accounts. A company's trade name may or may not be the name it uses when dealing with consumers.

Trade secret

A trade secret consists of confidential and proprietary information that provides a company with a competitive advantage, and is treated by the company in such a way as to prevent the public and competitors from learning about it. Companies attempt to protect

their trade secrets by including nondisclosure clauses in vendor agreements and employment agreements. See *noncompete agreement*.

U

Umbrella service

Umbrella services are similar to a pass-through agencies, except that umbrella services use sophisticated accounting procedures to set up each contractor as an independent business unit within a larger corporation. Contractors who work through an umbrella service realize significantly higher net earnings and superior benefits when compared with traditional agency temps.

Umbrella services offer very aggressive tax-deferred retirement plans with pre-tax contributions as high as 25% of gross wages. Also, umbrella services reimburse their contract employees for work-related expenses with tax-exempt dollars just like self-employed independent contractors.

The Professional Association of Contract Employees, a.k.a. P.A.C.E., has a web site that explains this innovative concept in detail, <http://www.pacepros.com/>.

Because umbrella services charge a fixed percentage of the billing rate they are explicitly full disclosure, and competition operates freely to keep the quality of service high and the cost low. Moreover, there is never any question for whom a true umbrella service works. A true umbrella service works for the *contractor*.

Unconscionability

The doctrine of unconscionability in contract law holds that a court may grant relief from or deny enforcement of all or part of a contract if it is found to be so grossly unfair as to be shocking to the average person. Unconscionability in, say, a temporary employment contract usually includes the absence of any meaningful choice on the part of the contract employee and contract terms so one-sided that they unreasonably favor the agency. The courts will terminate a contract if the buyer can prove unconscionability.

Unemployment compensation (UC)

See *unemployment insurance*

Unemployment insurance (UI)

Unemployment insurance is a program run jointly by federal and state governments to provide a modest, weekly payment to eligible workers who are unemployed through no fault of their own (as determined under state law), and who also meet other eligibility requirements of state law. Employers must pay unemployment insurance for all employees. Employers are not required to pay UI

for independent contractors. See *FUTA, state unemployment insurance*.

V

Vendor

A vendor is a person or company that sells goods or services to someone else, namely, a customer or client.

Vendor-client relationship

See *client-vendor relationship*.

Vendor on premise

See *gatekeeper*.

Venue

In contract law, the geographical region where a case will be heard. Akin to jurisdiction, which refers to the geographical area over which a court or government body has the power and right to exercise authority. As with governing law and jurisdiction the venue may be controlled by a clause in the contract, or by other factors such as where the parties live or where the contract is carried out. See *governing law, jurisdiction*.

Vesting, retirement plan

Most employers vest the contributions they make to their employees' retirement plans, meaning that the employer's contribution is not paid unless the employee remains with the company for a specified period after the contribution was earned. Vesting gives employees an incentive to stay with the employer. The time it takes for an employer's contribution to become the full property of the employee is called the vesting schedule or vesting period.

Virtual back office

See *umbrella service*

Virtual corporate office

See *umbrella service*

W

W-2 contract

This term is used by staffing agencies in job postings to indicate that the Contract Professional must become an employee of the agency in order to accept the contract assignment.

W-2 contractor

A W-2 contractor is the regular employee of a third-party employer of record. The term comes from the fact that individual workers

who are employees of a contract employment agency receive IRS Form W-2 from their employer at the end of the year. W-2 contractors are also called contract employees.

W-2 contractors are distinguished from 1099 contractors who are independent contractors, and who therefore receive IRS Form 1099-MISC. at the end of the year from the business that paid them.

W-2 contractors are usually paid by the hour, but some receive a salary. I suppose one could also call consulting firm employees W-2 contractors, but I prefer to call consulting firm employees captive contractors because of their status as salaried, benefited, captive employees.

W-2 employee

This is a redundant term that simply means employee. See *employee*.

W-2, IRS Form

See *IRS Form W-2*.

W-2 pass-through agency

A W-2 pass-through agency is an employer of record that represents the Contract Professional only after the Contract Professional has first landed a contract assignment. True pass-through agencies have no commissioned recruiters and no marketing overhead, so they can easily operate on a narrow gross margin. W-2 pass-through agencies generally take 20% of collected revenues or less, although some may charge as much as 25% of the billing rate. In all other respects a W-2 pass-through agency is similar to a traditional temp agency.

The umbrella service business model typically costs less than a W-2 pass-through agency, and offers a far greater range of benefits and services. See *1099 pass-through agency*, *pass-through agency*, *employer of record*, *umbrella service*.

W-4, IRS Form

See *IRS Form W-4*.

W-9, IRS Form

See *IRS Form W-9*.

Wage

See *gross wage*.

Waiver

A waiver is the express or implied voluntary surrender of a right under a contract. For example, one may wave the right to timely payment, or waive the right to sue for compensatory damages. Contracts may contain language specifying that waiver of a particular obligation does not constitute a waiver of all performance

under the contract. In this regard waiver is similar to severability. See *severability clause*.

Waiver of employee benefits clause

Companies generally include in their work for hire contracts a provision that the other party is an independent contractor and therefore gives up any benefits of employment with the company.

Warranty

A warranty is a written guarantee of a vendor's contractual responsibility. A limited warranty states under what conditions and for how long a work for hire is guaranteed to work, and how it will be repaired or replaced if there is a problem. For example, contracts frequently contain language specifying that the Contract Professional promises that work performed under the contract is accurate and complete.

Withholding taxes

Employers are required to withhold (deduct) a portion of their employees' wages and send them to the IRS once or twice a month. Employees indicate how much federal income tax they want withheld on IRS Form W-4 by specifying a number of allowances. Employers report withholding taxes on IRS Form W-2 and give a copy to each employee at the end of the year. The W-2 form is submitted with the employee's tax return to substantiate how much income tax has been withheld.

Employers are also required to withhold local and state income taxes where applicable. Employees usually indicate how much state income tax they want withheld by filling out a state form that is similar to the federal W-4 form.

Workers compensation

Workers compensation, also called workman's compensation, is a modest, fixed, monetary award paid to employees who are injured or disabled on the job. Although workers compensation is viewed as an employee benefit, the program was actually devised as a way to prevent workers or their dependents from suing the employer for injuries or death on the job.

State workers compensation statutes establish a framework for most employment. Federal statutes cover federal employees and workers employed in some significant aspect of interstate commerce. Workers compensation coverage is provided by a state agency or by private insurance companies depending on the state. Premiums are paid by the employer, and are based on job classification and the employers claims history.

Do not confuse workers compensation with disability insurance, which compensates individuals who are unable to work, regardless of where or how they became disabled.

Work for hire

Work for hire implies that the work produced by a Contract Professional becomes the property of whoever pays for the work. For example, under work for hire, the computer code produced by a contract software developer would become the property of the client upon completion of the contract. Graphic artists and writers generally oppose work for hire because it transfers ownership of copyright to the client, and the artist or writer is then unable to profit from subsequent repurposing or republishing of their work for commercial gain.

Workman's compensation

See *workers compensation*.

World Wide Web

The World Wide Web, also called simply the Web, is a part of the Internet designed to allow easier navigation of the network through the use of graphical user interfaces and hypertext links between different addresses. The Internet is an electronic communications network that connects computer networks and organizational computer facilities around the world.

X

X

What you put on the horizontal line at the bottom of a contract if you cannot spell your name.

Y

Yawn

The involuntary reaction by a self-reliant contractor triggered by yet another call from a rookie recruiter with yet another "opportunity of a lifetime".

Yellow

See *yuck*.

Yes!

Usually spoken with enthusiasm while simultaneously clenching a raised fist and dropping to one knee. Used when the client agrees to your billing rate, or when you win a major concession during contract negotiations. This is best done in private when the client cannot see or hear you.

Yippee!

Spoken at a high pitch while jumping up and down and waiving the client's first paycheck over your head.

Yuck!

Spoken with disgust and accompanied by a bilious yellow cast to the skin when you find out how much the recruiting firm is billing the client compared with how little they are paying you.

Z

Ziegler

The last name of James R. Ziegler, author of The Contract Employee's Handbook and The Contract Employee's Newsletter, developer of The Contract Employee's Workshop, and founder of P.A.C.E. – Professional Association of Contract Employees.

About The Author

James R. Ziegler, Ph.D. writes extensively on issues affecting Contract Professionals. He directs the Contract Employee's Project consisting of The Contract Employee's Handbook, The Contract Employee's Newsletter, The Contract Employee's Workshop, and P.A.C.E. - Professional Association of Contract Employees.

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About The Contract Employee's Handbook

The Contract Employee's Handbook is a very popular online resource for Contract Professionals, consisting of several PDF documents detailing many aspects of the contract employment industry. The CEHandbook teaches Contract Professionals all about how the staffing industry operates, and how to avoid being taken advantage of by recruiting firms and agency gatekeepers. It explains the ins and outs of self-marketing, setting the billing rate, negotiating favorable contract terms, and how to use available resources to maximize one's net income.

- Visit The Contract Employee's Handbook at: www.cehandbook.com

About The Contract Employee's Newsletter

The Contract Employee's Newsletter delivers up-to-date information for technical and professional contractors. Read tips and words of wisdom submitted by Contract Professionals. Collect links to useful resources. Learn how to smoke out unscrupulous recruiting firms. Get the information you need to manage your consulting career on your own terms.

- Subscribe to The Contract Employee's Newsletter at: www.pacepros.com/CENewsletter_html/cen_home.html

About The Contract Employee's Workshop

P.A.C.E. is developing an online presentation that will allow anyone with a telephone and a browser to attend live presentations of the CEWorkshop over the Internet. The online CEWorkshop will consist of four, one-hour, weekly sessions, each covering a different aspect of marketing your consulting services.

- Read about The Contract Employee's Workshop at: www.pacepros.com/CEWorkshop_html/CEWorkshop.html

About P.A.C.E. - Professional Association of Contract Employees

- ***P.A.C.E. ProTrack* – Unsurpassed Employer Of Record Service For Contract Professionals.** Revenue and Expense Tracking and the Best Benefits Package Available to ANY Employee in ANY Company in the USA.
- ***P.A.C.E. ProCure* – Marketing Solutions For Contract Professionals.** The P.A.C.E. ProCure Marketing Center Helps Contract Professionals Market Their Consulting Services Directly to Prospective Clients.

- ***P.A.C.E. ProExec* – Outsourced Corporate Employment For Key Employees.** ERISA Compliance and the Best Benefits Package Available to ANY Executive in ANY Company in the USA.
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