

Contingent and International Workers: Why a Background Screening Policy is Imperative

Smart Start Employment Services, Inc. by Jessica Barrett

According to the U.S. General Accountability office, more than 31% of the U.S. labor force is classified as a temporary, contract or freelance worker. Forbes estimates that 20-30% of Fortune 100 Companies are made up of a contingent workforce. Many companies are utilizing contingent labor in an effort to control cost, find specialized skill sets and keep up with a rapidly changing market, both here in the United States, and internationally.

As organizations move to a larger contingent workforce, and expand their global reach, it's important to update their background screening policy to include this diverse span of employees. Having a best practice in place ensures consistency surrounding the process of hiring contingent and international workers, while mitigating risk and liability.

The whitepaper *Mitigating and Managing Risk - Contingent Labor: What C-Level Executives Should Know*, published by Kelly OCG in June 2014, <http://bit.ly/1Ey0vD3>, highlights risks associated with a contingent and international work force that include:

- Regulatory and Compliance
- Access and Security
- Visibility/Analytics
- Technology

Regulatory and Compliance

Companies with multiple international locations are unintentionally taking on risk because they have a harder time tracking their third party labor. If a company has misclassified workers, they can face penalties and audits, which vary based upon country.

Using a high percentage of contingent workers exposes organizations to legal and regulatory risk. For example, according to an article published on www.staffingindustry.com, November 18, 2014, <http://bit.ly/1EAItPO>, a former freelancer sued both Google and the online staffing agency Elance-oDesk for violation of wage and hour laws because he was hired and classified as a freelance employee, but treated and expected to perform job tasks the same as a W-2 employee. In this case, both Google and Elance-oDesk were held responsible.

Access and Security

The U.S. Chamber of Commerce reports that businesses lose approximately \$50 billion a year due to employee theft and fraud, and estimate that 75% of employees steal from the workplace, most doing so repeatedly.

As it relates to access and security, it's imperative that companies consider who has physical access to their sites, what systems and other assets contingent workers should have access to, and the process for removing access immediately once an employee exits their organization.

Visibility and Analytics

It can be challenging for many companies, especially larger ones, to determine how many contingent workers they have and where they are located. Some are provided by staffing agencies, others hired

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directly by their recruiting department, and still others are independent contractors lost entirely because their wages are invoiced as “services”.

Technology

Companies lacking a vendor management system or other integrated tool to hire contingent workers and manage labor costs, are underutilizing or misusing their workforce talent. Organizations should be prepared to make safe, efficient and strategic hiring decisions based upon both their W-2 and contingent workers.

What is it that holds some companies back from implementing a stronger policy?

Some organizations fail to consistently screen contingent and international workers for several reasons. Companies are often faced with the challenge of who is held accountable for the background check process. Additionally, there is often the assumption that background checks will be costly and lacking in timeliness, and in the case of international checks especially, employers are often overwhelmed about where and how to start the process.

Agency conducted background checks are not necessarily complying with the organizations same standards and policies. Companies need to be clear about exactly what type of background screening process is required, so that both agency and employer are performing identical checks. Employers also need to work with their agency to define their standards for acceptable screening and hiring criteria.

As it stands in many organizations, contingent staffing is controlled by the procurement department, taking ownership of that portion of their workforce, while Human Resources may have little awareness of spending, productivity and quality of, in some cases, a sizeable portion of their employees.

In the case of international background checks, it can be difficult to obtain information based upon the fact that there is no consistency internationally with regard to these processes. Some countries favor the privacy of the individual over the employer looking to obtain personal information, and have strict information and data security laws. Still other countries have a very limited infrastructure as it relates to information. There are over 250 countries or entities, each with their own set of rules, regulations and cultural practices. For multinational employers, adapting to a vast array of requirements can be overwhelming.

Best Practices for Establishing Background Check Processes

Organizations utilizing contingent workers, or hiring globally need to adopt a clear background check policy. Companies have the legal right to conduct a background check on all workers, including temporary employees, contractors and subcontractors.

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Some companies are required by federal, state or local law to conduct a background check. Employers should have a background check policy in place that complies with state laws, government contract requirements, industry requirements, the Fair Credit Reporting Act (FCRA) and the U.S. Equal Employment Opportunity Commission (EEOC). It is important for companies to use verbiage that includes contingent workers within their background check policies.

Minimally employers should be:

- **Writing indemnification clauses** into agreements with staffing agencies, so that in the event that they are sued for an agency's discriminatory act, they'll be defended financially and held harmless. Human Resource departments need to ensure that they are EEOC-compliant for all categories of workers.
- Maintaining a **Global Screening Policy** insuring compliant, consistent, transparent and successful processes, complying with the country-specific laws and regulations and addressing local customs and cultures when screening, on-boarding and dismissing labor.
- **Making certain that hiring managers are fully trained** and understand their accountabilities regarding personal privacy guidelines, which in some countries are held in higher regard than employers' rights, and that their training is documented.
- **Reviewing international Employee Applications** and ensuring that employment forms do not ask for unnecessary or excessive personal data as it relates to that countries' local privacy laws.
- **Requiring necessary identification.** Each country has different ways through which they validate identity. Some require several forms containing photo identification, as well as supporting documentation, such as utility bills proving residency at an address.
- **Making sure that criminal data from the country you are hiring within is a matter of public information prior to requesting a record search.** Requiring a criminal record search in a country where there are laws governing access to this data and it is not considered public information, can be a violation of human rights and local privacy law, and can be subject to criminal prosecution by both the U.S. as well as the host country's criminal justice systems.

Extended Practices Employers Should Consider:

- It is strongly recommended that **Human Resources be accountable for the entire workforce of their organization.** To manage contingent workers differently than the W-2 workforce is risky, as well as inconsistent and sometimes costly.
- **Automate the on-boarding and exit processes for contingent workers.** This way, the contingent workers receive clear expectations, critical information and quality training at the start of their assignment.
- **Consider using a competent, reputable International Background Check Provider.** Confirm that the provider has extensive knowledge about global background check processes and the local laws within the countries where they would be offering their services.
- **Consider asking their staffing agencies to partner with the same background check vendor they do,** in order to maintain consistencies in their background check processes.