



CRASH COURSE

## Hiring your first contractor



# Looking for a freelancer? Here's where to start.

Amazing work takes a lot of work. And when you and your team have loads to do and little time, you may be unsure about how to get it all done. Take a deep breath — it's the perfect time to bring your first contractor on board. Now that you have this guide in your hands, you'll be able to zoom past each step of the hiring process so that you and your contractor can really knock it out of the park.

## FAMOUS FREELANCERS THROUGHOUT HISTORY

### **J.D. Salinger**

Before *Catcher in the Rye* ever hit shelves, Jerome David Salinger penned pieces for the Saturday Evening Post and a variety of other publications.

### **Willie Nelson**

This country star was a freelance songwriter before being inducted to the Country Music Hall of Fame. Remember "Crazy" by Patsy Cline? You can thank Nelson for that one.

### **Brad Pitt**

This Hollywood legend's first job was at El Pollo Loco, where he handed out flyers while dressed up in, oh yes, a chicken suit.

## How to prep your business for contractors

Before you ever team up with a freelancer, you need to make sure your business is recognized in the eyes of the law. Rest assured, it's not as scary as it sounds. From getting a federal ID number to classifying your workers, this section will show you the ropes.

# When and why you should apply for a federal employer identification number (FEIN)

To determine whether or not you need an employer ID number, first think about the type of entity you want to form. Most small businesses are incorporated because they receive liability protection in return, but there are other options that may also be a fit.

If you decide on starting an LLC or Sole Proprietorship, you can use your Social Security Number (SSN) in place of a FEIN — up until you hire your first employee. However, if you plan on running payroll through a payroll provider, you'll definitely need your own employer ID number.

Here's a quick glimpse into the different business types and requirements for each:

## HELPFUL WEBSITES

- [Choose your business structure](#)
- [Compare company types](#)
- [Set up your FEIN](#)
- [Enroll in EFTPS](#)

## WHEN A FEIN IS NEEDED

- **S Corporation, or S Corp**

An S Corp is a popular choice for many businesses. S Corps can provide significant tax savings, but are generally more complicated legally.

- **C Corporation, or C Corp**

A C Corp is an alternative to the S Corp. Unlike the S Corp, C Corps can be subject to “double taxation,” which may make them unpopular with small businesses.

- **Partnership**

A Partnership is when at least two people are in complete control of the business. However, each partner is personally liable for the company's financial situation.

## WHEN A FEIN IS NOT NEEDED

In this case, a SSN can be used until a first employee is hired.

- **Sole proprietorship, or Sole Prop**

A Sole Prop is one of the most popular entities because it's easy to start and gives the owner total control. As a Sole Prop, you are personally responsible for all financial obligations of your company.

- **Limited Liability Corporation, or LLC**

An LLC is a lightweight alternative to incorporate your business. It does not have the typical tax savings as the other options, but it is less confusing.

## Become compliant with your state departments

Let's state the facts: your next step is to get buddy-buddy with your state. Some entity types — corporations, LLCs, partnerships, and nonprofits — will need to register with their state once they obtain their FEIN. See what your specific requirements are here.

### LET FREEDOM RING

34% of American workers are currently freelancing. According to the Freelancers Union, if those 53 million freelancers stood on each other's shoulders, they'd be equivalent to 10,000 Mt. Everests.

## Make sure workers are properly classified

As your team grows, the difference between freelancers and employees can become blurry. In this chapter, we'll clear a few things up.

One of the most important legalities to understand is how to accurately define your workers. What's the big deal, you ask? Well, any misstep could sock you with steep fines and penalties, so pay close attention.

## HOW TO TELL IF YOUR WORKER IS A CONTRACTOR

- Is the worker being hired for a temp project?
- Can the worker choose where and when the work is performed?
- Does the worker use their own materials for the work performed?
- Is the worker paid a flat fee or hourly rate that is invoiced to the company?

*If you answered yes to any of these questions your worker is most likely a contractor.*

If you just discovered that your contractor is actually an employee, that's okay — better now than never. In fact, we have just the guide for you.

Still unclear about where your worker fits? Fill out IRS Form SS-8 to receive a final call. It could take up to six months, but it will give you peace of mind once you know the truth.

## What to do before you hire your first contractor

How can you cover your bases before your freelancer ever joins? This section will help you prepare right from the start.



## Define the relationship

Ah, one of the first relationship milestones: defining what you are. Find your answer by doing some soul-searching about the kind of person your company needs. Is it someone you can work with on a project-to-project basis? Or someone you want to eventually join full-time? Do they have to be local? Can they work from the office? Exploring each of these questions will help you zero in on who you're looking for and how you want to work with them.

### HAVE AN ATTORNEY WRITE A CONTRACT

Now, you need to get your hands on a legal contract that explains the relationship. While we recommend that a lawyer draw this document up for you, you can also use this [Rocket Lawyer template](#) as a starting base, along with the guidelines below:

### WHAT TO INCLUDE

- 1. Outline the relationship:**
  - a. Project milestones tied to compensation
  - b. Equipment your freelancer can use
  - c. Offices your freelancer can work from
  - d. Any other specifics
- 2. Ownership rights, if needed**
- 3. Confidentiality agreement, if needed**
- 4. Early termination clause explaining how many days notice you have to give before ending the relationship**

## What to do after you hire your first contractor

Once your freelancer starts, so do more of your legal duties. This section will help you make sense of the dizzying array of forms and documents coming your way.

# Checklist of legal to-dos

Here are a few legal and regulatory items you'll want to familiarize yourself with once your contractor accepts the gig. We've linked to the appropriate documents in this guide, but you should also mosey on over to [IRS.gov](https://www.irs.gov) to make sure you have the latest versions.

## ☐ **STEP #1: ASK THEM TO FILL OUT FORM W-9**

When tax time rolls around, Form W-9 will be your best friend. This document verifies your freelancer's name, address, and Taxpayer Identification Number (TIN), so they can't dodge the IRS. The W-9 doesn't need to be sent anywhere, but companies are required to keep it on file for a minimum of four years. While reviewing your contractor's W-9, make sure they exempt themselves from withholding, since they should be filing self-employment taxes on their own.

### **PRO TIP**

If your freelancer is an international resident or citizen, collect [Form W8-BEN](#) instead.

## ☐ **STEP #2: FILL OUT TWO 1099-MISC FORMS**

Have you paid your freelancer over \$600 this year? If that's the case, you'll need to complete a 1099-MISC form, which reports how much they earned while working with you. You'll both need this form for filling out your taxes, so don't lose it.

- ☐ Send the form to your contractor by January 31st.

If the 31st falls on a weekend, send it by the following Monday.

- ☐ Send a copy of the form to the IRS by February 28th, or by March 31st if you file your 1099s electronically through the FIRE system.

### **PRO TIP**

Prefer the paper route? If you file your 1099s by mail, you'll also need to submit [Form 1096](#), which is basically a summary of all your 1099 forms. Add one more piece of paper to your pile.

## Checklist of best practices

Once you've nailed down the legal requirements, there are some extra things you can do to ensure that your contractor relationship is going as smooth as possible. Here are a few tricks of the trade that will help you stay compliant (and sane).

### ☐ **ASK FOR INVOICES**

Only pay your contractor once they've sent an invoice your way. Save each invoice for your records, and don't accept any expense reports. Why? Because with great freedom comes great responsibility — all business expenses are the responsibility of your freelancer.

Tools to check out:

Bill.com • Harvest • FreshBooks

### ☐ **ADD YOUR FREELANCER TO PAYROLL**

Even though they're not full-time? In some cases, yes.

Depending on how long your relationship will last, it may be easier to add your contractor directly to your company's payroll.

### ☐ **KEEP RECORDS LIKE A BOSS**

Records, records, records. Just like regular business expenses, you should hold on to every single document related to your freelancer. This means contracts, invoices, and proofs of payment, if they're not done electronically.

Tools to check out:

HelloSign • DocuSign • Google Docs

## What should I look for in a contractor?

We asked three successful Gusto business owners to tell us what they look for in fabulous freelancers. Here's what they told us.



*“At Orate, one way we try to get a sense of a person’s communication style is by asking the following question: ‘Tell us about a time you had a disagreement with a coworker, how you handled it, and how you ultimately reached a solution.’ Their answer will walk you through their thought process and how they deal with conflict in the workplace.”*

**VERONICA EKLUND • CO-FOUNDER & CEO OF ORATE**



*“The characteristic I look for more than anything else is their ability to communicate. There have been several times where I’ve hired the contractor who was easy to talk to over the one that had the strongest technical chops, and I haven’t been let down yet.”*

**RYAN SULLIVAN • CEO OF WP SITE CARE**



*“Responsiveness and quality work are the highest priorities on my list. I ask a lot of questions up front and together we come up with a standard operating agreement which we both agree to before work begins.”*

**CHRISTINE PIETRYLA WETZLER • FOUNDER AND PRES., PIETRYLA PR & MARKETING**

## Additional resources

We know there's more to hiring contractors than filling out paperwork. Here are some useful resources you can use to get your freelancers up and running.

## TEMPLATES AND LEGAL RESOURCES

For broad templates and legal resources, check out these sites:

- [Startup Company Lawyer](#)
- [Rocket Lawyer Business Legal Forms](#)
- [HR at MIT](#)
- [Orrick Start-Up Forms Library](#)

## JOB DESCRIPTION TIPS

A good job description is critical for finding the right freelancer.

For job description writing tips, check out these options:

- [HR at MIT Job Descriptions](#)
- [Mashable HOW TO: Write a Standout Job Description](#)

## NON-DISCLOSURE AGREEMENTS

Some businesses may require their contractors to sign non-disclosure agreements (NDAs). Rocket Lawyer provides a simple NDA template here:

- [Rocket Lawyer Sample NDA](#)

## CONTRACTOR AGREEMENTS

When you hire a contractor, you may want to clarify the role, compensation, and other legal ramifications of the position (including scope and limitations). These resources will help you generate those documents:

- [Orrick Start-Up Forms: Employment and Consultant](#)
- [Docracy Independent Contractor Agreement Template](#)



## **FRAMEWORK**

This is our ongoing resource section that talks about the latest and greatest in small business. Come here to learn about:

- Hiring your first employee
- Getting your business ready for end of year
- The 6 most common payroll mistakes to avoid
- And much more

## **GUSTO FAQ**

Here we answer some of the most common questions about our payroll, benefits, and compliance software, including:

- Can I pay independent contractors with Gusto?  
(Spoiler alert — yes!)
- Which federal, state, and local forms are filed on my company's behalf?
- How does pricing work and what's included?
- How do I get started?

# Thanks for reading!

We hope you enjoyed learning about all the awesomeness involved when you welcome a new contractor to the team. Have any questions about what you read? Flip through [our help center](#), visit [our blog](#), and take a look at some of the other [free Framework resources](#) that are just waiting for you to explore.

With Gusto, we help you and your team stay compliant with all the tax and regulatory laws so you never have to worry about a thing.

**START MY FREE TRIAL →**