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Hired a Contractor? Read This First

5 Legal Protections Every Business Owner Needs Before Hiring

Hiring a contractor should be one of the simplest transactions in business: you define the work, agree on a price, and the contractor delivers. In practice, contractor disputes are among the most common cases that walk through our door. The work is late, over budget, or never finished. The contractor disappears mid-project. The "independent contractor" turns out to be a misclassified employee, triggering penalties. Or the finished product belongs to the contractor because nobody addressed ownership in writing. Every one of these problems is preventable—if you put the right protections in place before the work begins.

1 A Written Agreement (Not a Handshake, Not an Email Chain)

It sounds obvious, but a striking number of businesses hire contractors on nothing more than a verbal understanding or a string of emails that no one could reconstruct into a coherent agreement. California law does not require most service contracts to be in writing, but oral contracts are nearly impossible to enforce when the parties disagree about the terms. And an email chain is not a contract—it is a conversation that both sides will interpret differently when the relationship sours.

What it costs you: A company hired a developer based on a series of Slack messages and a verbal quote. When the project went over budget by $40,000, there was no written scope to measure against. The developer claimed the extra work was within scope. The company had no document to prove otherwise. The dispute settled for a fraction of what the company spent—and the project was never completed.

The fix:
Use a written independent contractor agreement for every engagement over $5,000. At minimum, it should define the scope of work, deliverables, timeline, payment terms, and what happens if the contractor fails to deliver. A two-page agreement drafted by your attorney costs a few hundred dollars. A dispute without one costs tens of thousands.

2 Clear Scope, Milestones, and Payment Tied to Deliverables

The single most common source of contractor disputes is scope creep: the work expands beyond the original agreement, additional charges appear, and neither side can point to a clear boundary between what was included and what was extra. This happens because the original scope was vague. "Build a website" is not a scope of work. "Design and develop a five-page responsive website with CMS integration, delivered in wireframe by April 1 and final build by May 15" is a scope of work.

What it costs you: A restaurant owner hired a contractor to "renovate the dining area." No drawings, no specifications, no written milestones. The contractor billed $85,000 for work the owner expected to cost $50,000. Because the scope was never defined in writing, the owner had no contractual basis to challenge the overage. The contractor filed a mechanic's lien on the property.

The fix:
Break every project into defined milestones with specific deliverables. Tie payment to milestone completion, not to time elapsed. Hold 10–20% as a final payment due only upon satisfactory completion. This gives you leverage if the work falls short and forces both sides to agree on what "done" looks like before the work begins.

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3 Intellectual Property and Work-Product Ownership

Under California law, the default rule for independent contractors is that the contractor owns the intellectual property they create—unless the contract says otherwise. This surprises most business owners. If you hire a designer to create your logo, a developer to build your app, or a copywriter to produce your marketing materials, the contractor may own that work product unless your agreement includes an express assignment of intellectual property rights. A “work made for hire” clause alone is often insufficient for independent contractors because the Copyright Act limits work-for-hire to specific categories.

What it costs you: A startup paid a freelance developer $60,000 to build a custom software platform. The contract had no IP assignment clause. When the startup tried to raise funding, due diligence revealed the company did not own its own codebase. The developer demanded a six-figure licensing fee to assign the rights. The funding round collapsed.

The fix:

Include an express IP assignment clause: “All work product, deliverables, and intellectual property created by Contractor in connection with this Agreement shall be the sole property of Company, and Contractor hereby assigns all rights, title, and interest therein to Company.” Combine this with a work-for-hire designation where applicable and a representation that the work is original and does not infringe third-party rights.

4 Misclassification Protection (The AB5 Problem)

California’s AB5 law (codified in Labor Code § 2775) imposes a strict three-part “ABC test” for determining whether a worker is an independent contractor or an employee. Under this test, a worker is presumed to be an employee unless the hiring entity proves that the worker (A) is free from the company’s control and direction, (B) performs work outside the company’s usual course of business, and (C) is engaged in an independently established trade or occupation. Failing any one prong means the worker is an employee—and the company owes back wages, overtime, benefits, payroll taxes, and penalties.

What it costs you: A marketing agency classified its team of 12 content writers as independent contractors. The writers used company email addresses, worked set schedules, and produced content exclusively for the agency’s clients. A single PAGA claim triggered penalties exceeding $200,000, plus back employment taxes and benefits. The agency’s annual savings from misclassification were a fraction of the ultimate exposure.

The fix:

Before hiring any contractor, run the ABC test against the actual working relationship—not the label on the agreement. If the contractor works exclusively for you, uses your tools, follows your schedule, or performs work that is a core part of your business, you likely have an employee. Consult an attorney before engaging workers in gray-area arrangements. The cost of a 30-minute classification analysis is negligible compared to a PAGA claim.

5 A Termination Clause With Teeth

Most contractor agreements either have no termination provision or include a generic “either party may terminate with 30 days’ notice” clause. That is not enough. What happens to work in progress if you terminate early? Who owns the partially completed deliverables? Does the contractor owe you a refund for work paid but not delivered? Can you terminate immediately for cause—and what constitutes “cause”? Without clear answers to these questions, terminating a bad contractor becomes a negotiation instead of a contractual right.

What it costs you: A company terminated a branding agency two months into a six-month engagement after the agency missed three consecutive deadlines. The agency refused to return the $25,000 advance, claiming it had been “learned” through hours worked. The contract had no termination-for-cause provision, no refund mechanism, and no definition of what constituted a material breach. The company spent more recovering the advance than the advance itself was worth.

The fix:

Define termination for cause (missed deadlines, material breach, failure to meet specifications) with immediate effect and a right to a pro-rata refund. Define termination for convenience with a reasonable notice period (typically 10–15 days for short-term engagements). Specify that all completed and in-progress work product transfers to you upon termination. Include a clause requiring the contractor to return all confidential information and company materials within 5 business days of termination.

The Bottom Line

Hiring a contractor is a business relationship, and every business relationship needs a legal foundation. The five protections in this guide cost almost nothing to implement up front—and they eliminate the most common disputes that turn a $20,000 project into a $100,000 problem. If you are about to hire a contractor for any engagement over $5,000, have an attorney draft or review the agreement before the work starts. It is the cheapest insurance you will ever buy.

Hiring a Contractor? Let’s Get the Agreement Right.

Kolmogorov Law, P.C. drafts and reviews contractor agreements, resolves contractor disputes, and advises California businesses on worker classification compliance.

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