

HR Tips: Hiring an Employer of Record (EOR) or Agent of Record (AOR) for Your Foreign Employee

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This is one of those articles where I remind the reader that we here at ART are only headhunters who know executive search recruitment very well, but only executive search recruitment, and that in no way are we qualified to replace your Human Resources or Legal departments.

Do I now have to say that this article is "for entertainment purposes only - do your own research?" OK, let's do that.

In the United States, unfortunately, many huge, middle and small U.S. firms have developed a bad habit of hiring full-time, 100% dedicated employees as legal subcontractors. Yes, I know that there are many exceptions, but I'm not referring to entrepreneurial people with multiple clients who like running their own consulting business.

This habit is helped by the fact that in most U.S. states it is perfectly legal for an individual to register as a business and to simply invoice the client (employer). Normal factors of employment, like the accounting for income, payment of taxes and social security, and making allotments for pensions, health benefits, etc., are in this model the sole concern of the subcontractor (employee), not the client (employer).

In our 40 years doing executive search in the U.S., our firm has never had a client come to us, asking us to find U.S. employees who would work as self-employed subcontractors. However, for foreign hires, this does sometimes come up. The employer simply does not want to hire lawyers and accountants here and abroad to set up legal entities in a certain country, but they do need a dedicated employee there on the ground. Often these roles involve sales and business development, but it could be for any role.

Sometimes they do plan to set up a legal entity in the future, but only after local employee #1 has built the market and given HQ confidence to make the investment.

But when I hear a Human Resources Manager tell me, "Yeah, and what we want to do is, at the end of the month, we'll just wire the person's pay," I feel a burst of stomach acid well up from my gut, momentarily causing me to clear my throat before responding. OK, here we go again.

- First thing, are you sure that you want to hire someone in such a tenuous status? From a recruiting standpoint, it is not everyone's favorite choice to set up a business to just get a job. So that takes off the table most of the best possible candidates, who are already working successfully at your firm's competitors, getting normal compensation, benefits, opportunities for corporate promotion, etc.
- A person may ask: "If a company doesn't want to invest in me or our business here, how can I present that lack of commitment by the company to our local customers and partners?"
- In some countries, it's easy and not too problematic to set up a self-employment company, and some people would like the opportunity to do so. But in some countries it is near illegal for a person to register as a business in which the person only serves one client. The myth of self-employment is in those jurisdictions regarded by authorities as an attempt to deceive. That pronouncement could have legal repercussions on the local citizen and the client (employer) and perhaps also on local customers, suppliers, and partners.
- There could be significant legal risks for the subcontractor if something goes wrong in the business dealings between the client/employer, the subcontractor/employee and the local customer. One

example might be that product sold to the subcontractor arrives from the U.S. client too late, defective, in poor quality, etc., and the local customer sues. Sues whom? The subcontractor/ employee, because there is no other legal business entity.

- In some countries, especially in some countries in western Europe, it simply is not professionally well regarded to be in this kind of employment status. Again, the best candidates might refuse the job.

In the event that the target country does not allow for easy U.S.-style self employment status, then the U.S. employer could have a variety of problems when "simply hiring and wiring payment." The company might find a person who is willing to accept payment in that manner and s/he might claim to take responsibility for legalities, such as accounting for income, paying taxes, make allotments for pensions, etc. to his or her national jurisdiction. But what if the person does not fulfill national legal requirements and just receives payment from the foreign company? That person might be taking a perilous legal shortcut and just take the money and not report it, avoiding taxes. Maybe s/he was sincerely willing to set up a company but found that too much cost or paperwork would be involved, so s/he might let things go too far without taking care of legal mandates.

Fast and easy shortcuts can cause a significant risk to the U.S. employer, but one way of avoiding some of these problems is to hire a local firm as the **Employer of Record** or **Agent of Record**. That firm would be officially the employer of your subcontractor. You would remit salary to that firm, along with their service fees, and their responsibility would be to pay your local person and to account for taxes, pensions and other mandated local benefits.

What does that service provider do? They might be a local law firm. They might be a local accounting firm. In fact, in some countries, they might conduct legal business in any sort of trade.

Companies might decide to use a foreign payroll company or perhaps a foreign office of a large U.S. payroll company as the "Employer of Record" or "Agent of Record" when they hire a person in another country. Typically the payroll companies (*nómina* companies, in some Spanish-speaking countries) are contracted for local sales managers or sales representatives, where a company sees a need to hire a person to maintain or grow their business, but the company does not want to set up a legal entity in that country.

In any case, if you do choose the route of using a payroll company as the EOR or AOR, then it is imperative that you try your best to vet them, including their corporate history, legal entity in the target country, and their processes and assurances to both you and your subcontractor (employee).

When a U.S. company wants to hire through a third-party Employer of Record (EOR) or Agent of Record (AOR), the due-diligence process should focus on these broad areas:

What to evaluate	Why it matters	How to verify
Legal & regulatory compliance	The EOR/AOR becomes the legal employer in the worker's country, so it must obey local labor, tax, social-security, immigration and data-privacy rules. Non-compliance can generate fines, back-pay, or even force the employee's termination.	<ul style="list-style-type: none">Ask for a copy of the provider's standard employment contract for each jurisdiction you'll use.Request evidence of local registrations, tax IDs, and any required licenses.Check that the provider tracks statutory benefits, leave entitlements and termination procedures.

What to evaluate	Why it matters	How to verify
Financial stability & insurance	If the EOR fails to remit payroll taxes or provide statutory benefits, the client can become liable. Insurance protects against wrongful-termination claims, workers-comp, and other employer liabilities.	<ul style="list-style-type: none"> Verify GDPR / local data-protection safeguards (especially if employee data will be stored in the provider's systems). Review audited financial statements or credit-rating reports. Confirm that the provider carries employer-liability, workers-comp, and professional indemnity insurance covering all operating jurisdictions. Look for a "financial guarantee" clause in the service agreement.
Operational capability & technology	You need a seamless on-boarding experience, timely payroll runs, and easy access to employee records. Poor ops lead to delayed paychecks, compliance gaps, and unhappy talent.	<ul style="list-style-type: none"> Demo the provider's HR/payroll portal – check that it supports local pay cycles, currency conversion, and electronic payslips. Ask about the provider's process for handling visas/immigration, local benefits enrollment, and tax filings. Verify that the platform integrates with your existing HRIS or accounting system.
Coverage & local expertise	Not all EORs operate in every country, and expertise can vary dramatically.	<ul style="list-style-type: none"> Confirm the exact list of countries where the provider has a legal entity or partner network. Request client references (ideally in the same jurisdiction) and ask about the provider's responsiveness to local regulator inquiries.
Governance, security & certifications	Strong governance reduces risk of data breaches and ensures consistent service quality.	<ul style="list-style-type: none"> Look for ISO 27001, SOC2 Type II, or comparable security. Review the provider's data-retention and deletion policies. Ensure the contract includes clear SLA metrics

What to evaluate	Why it matters	How to verify
Contractual terms & exit strategy	You need to know exactly what you're buying and how you can end the relationship without exposing yourself to liability.	<ul style="list-style-type: none"> (payroll run-time, issue-resolution windows) and penalties for missed targets. Examine fee structures (setup, monthly, per-payroll, termination fees). Ensure the agreement spells out who owns employee data after termination and how the employee can be transferred to your own entity or another EOR. Confirm that the provider will cooperate with any audit or regulatory request involving your employees.
Reputation & client base	Established providers tend to have refined processes and fewer hidden pitfalls.	<ul style="list-style-type: none"> Research online reviews, press releases, and case studies. Ask the provider for a list of notable customers (especially other U.S. firms hiring abroad).

QUICK DUE-DILIGENCE CHECKLIST

- **Company background** – years in business, ownership, financial health, insurance coverage.
- **Jurisdiction coverage** – confirm legal presence or vetted partners in each target country.
- **Compliance documentation** – sample contracts, proof of local registrations, tax filing procedures.
- **Security & certifications** – ISO 27001, SOC 2, GDPR compliance statements.
- **Technology platform** – demo of payroll/HR portal, integration options, data-storage locations.
- **Service Level Agreements** – payroll timing, issue-resolution SLAs, penalties.

- **Cost transparency** – detailed fee schedule, any hidden costs (benefits administration, currency conversion).
- **References & case studies** – speak with existing clients in similar industries/jurisdictions.
- **Exit & transition plan** – how employees are moved to your own entity or another provider, data hand-over, notice periods.

By systematically reviewing these points—and requesting supporting documents or live demos—you can reduce the risk of non-compliance, unexpected costs, or operational disruption when hiring internationally through an EOR or AOR.

The Importance of Due Diligence for U.S. Firms

When a U.S. firm hires international employees or contractors through an Employer of Record (EOR) or Agent of Record (AOR) provider, due diligence is essential to mitigate risks such as non-compliance with local laws, financial liabilities, data breaches, and operational disruptions. EORs act as the legal employer for employees, handling payroll, taxes, benefits, and HR compliance in foreign countries, while AORs (also known as Contractor of Record or COR) focus on managing independent contractors, including payments, classification, and tax withholding.

Poor selection can lead to penalties from U.S. authorities (e.g., IRS for misclassification) or international regulators. Focus on providers with owned entities in target countries for better control and compliance, rather than those relying on third-party aggregators, which may introduce additional risks and costs.

Key Areas to Evaluate in Due Diligence

Use the following checklist to assess potential EOR/AOR providers. This includes verifying credentials, asking targeted questions, and reviewing documentation. Start by compiling a shortlist based on your hiring needs (e.g., specific countries, employee vs. contractor focus), then conduct interviews, reference checks, and contract reviews.

1. Legal and Compliance Expertise

- Confirm the provider has owned legal entities (not just partnerships) in the countries where you plan to hire, ensuring direct control over compliance rather than reliance on subcontractors.
- Verify adherence to local labor laws, tax regulations, and employment standards, including ongoing monitoring for changes (e.g., minimum wage updates, leave policies). For AORs, ensure accurate contractor classification to avoid misclassification penalties under U.S. and international rules.
- Check for compliance certifications (e.g., ISO 27001 for data security, GDPR/CCPA for privacy) and audit processes.
- Questions to ask: "How do you stay updated on employment law changes in our target countries?" and "What is your process for handling audits or disputes?"

2. Global Coverage and Infrastructure

- Assess the provider's presence in 160+ countries if needed, but prioritize depth in your specific markets (e.g., expertise in EU data protection or Asian labor laws).

- Evaluate if they offer end-to-end support, including visas, relocation, onboarding, and termination, plus recruitment if you lack local talent sourcing.
- For scalability, confirm they can transition from EOR to PEO (Professional Employer Organization) as your team grows, allowing you to establish your own entity later.
- Questions to ask: "In which countries do you have your own entities?" and "Can you support both employees and contractors in the same markets?"

3. Financial Stability and Pricing Transparency

- Review the provider's financial health through public records, credit reports, or references to ensure they can reliably handle payroll and tax remittances.
- Demand clear, itemized pricing without hidden fees (e.g., setup costs, currency conversion, or exit fees). Compare flat-fee vs. percentage-based models.
- For AORs, check handling of local taxes like VAT/GST and invoicing compliance.
- Questions to ask: "What is your full pricing structure, including any markups?" and "How do you handle currency fluctuations and tax withholdings?"

4. Data Security, Privacy, and IP Protection

- Ensure robust data protection policies compliant with GDPR, CCPA, or equivalent, including encryption and breach response plans.
- Verify intellectual property (IP) safeguards, especially for tech firms, to protect your company's assets in international hires.
- Questions to ask: "What security protocols do you use for employee data?" and "How do you ensure IP rights remain with our company?"

5. Reputation, References, and Performance Metrics

- Research client testimonials, case studies, and ratings (e.g., Net Promoter Score). Request references from similar U.S. firms.
- Check for any past litigation, compliance violations, or negative reviews via online searches or databases like Better Business Bureau.
- Evaluate customer support responsiveness, including SLAs for payroll processing (e.g., 24/7 access) and dedicated account managers.
- Questions to ask: "Can you provide references from clients in our industry?" and "What is your average response time for support queries?"

6. Technology, Integration, and Contract Terms

- Assess platform usability for payroll tracking, reporting, and HR integration.
- Review contract details: Localized employment agreements, termination clauses, liability limits, and exit strategies (e.g., data transfer upon ending the partnership).
- For AORs, ensure flexible contractor management tools, like automated payments and compliance dashboards.
- Questions to ask: "How does your platform integrate with our systems?" and "What are the terms for contract termination?"

Summary Checklist Table

Here's a quick-reference table summarizing key checks:

Category	What to Verify	Why It Matters
Legal Entity	Owned entities in target countries	Reduces compliance risks and markups.
Compliance Monitoring	Ongoing updates to laws and certifications	Avoids penalties from changes in regulations.
Pricing	Transparent, no hidden fees	Ensures cost predictability.
Data Security	GDPR-compliant policies	Protects sensitive information.
References	Client testimonials and NPS	Gauges reliability.
Contract Terms	Clear SLAs and exit clauses	Minimizes lock-in risks.

Final Recommendations

Involve your legal, HR, and finance teams in the evaluation. Consider starting with a pilot in one country to test the provider. For U.S.-specific concerns, ensure the EOR/AOR aligns with federal requirements like OFCCP for diversity or IRS rules for tax reporting. If hiring contractors via AOR, prioritize providers experienced in U.S. misclassification avoidance to prevent reclassification as employees. Always consult a U.S. attorney specializing in international employment for tailored advice.

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