FAIR MEASURES, INC.

P.O. Box 2146 Santa Cruz, CA 95063
831-458-0500, fax 458-0181
www.FairMeasures.com
training@FairMeasures.com

Managing Within the Law II

reference materials

We gratefully acknowledge the contributions to these materials of all of the attorneys who have worked with Fair Measures: Rita Risser, J. Logan, Jonathan Levy, Ann Kiernan, Steve Duggan, Lynne Eisaguirre, Julie Crane, Joelle Sullivan and Michele Huff. We also are grateful to our clients, and their legal counsel, Human Resource professionals and Training Department staff, who have given freely of their ideas to improve this course.

Working with Independent Contractors

The Costs of Independent Contractors

To compete in today's market, companies must change continuously. Many companies believe quick response to change depends on a flexible workforce. In their pursuit of excellence, they have worked to increase revenue per employee by keeping key people in core areas, and outsourcing other functions, increasing the use of flexible staffing and relying more on independent contractors.

This trend caught the attention of the Internal Revenue Service. As the number of employees dropped, so did the amount collected in taxes. When employers classify workers as independent contractors, they don't pay the employer portion of the Social Security tax for that individual. In addition, according to the IRS, only 13% of consultant and independent contractor income is properly reported, resulting in annual losses of $2 billion.

The IRS doesn't penalize companies when independent contractors don't pay their taxes. But there is a legal definition for independent contractors, and if they don't meet that legal definition, they are considered by law to be employees. At that point, the IRS can fine the employer for the back taxes and withholding that should have been paid. The IRS can require the employer to pay those fines even if the contractors paid all their taxes.

The potential cost to companies is enormous. If they misclassify independent contractors, these are the back taxes due:

- 100% of employee's social security contribution (up to 15.3% of the amount paid to the employee),
- employer's contribution to Social Security (7.65% of first $60,600 wages)
- Federal and State Income Taxes not withheld (usually 20%),
- State Disability and Unemployment insurance (6.2% of amount paid to employee)
- for a total of 41.5% -- and the IRS can go back three years, and add interest, as well.

And, any corporate officer or employee who "willfully" fails to collect and pay taxes can be held personally liable for the uncollected taxes.

Then there are the penalties, summarized in Table 1.

Table 1
Summary of Penalties

provision	*charges assessed*
failure to make timely deposits	10% of underpayment
failure to make timely state deposits	varies by state
failure to file employment tax return	5% of tax per month up to 25%
failure to file state tax return	varies by state
accuracy related penalty	20% of underpayment
failure to file information return	$50 per return
failure to furnish statements to payees	$50 per return ($100,000 maximum)

There are other ramifications if employers misclassify workers. If "contractors" are really employees entitled to overtime, the employer is liable for back wages and fines, and the responsible manager could be sentenced to up to 6 months in jail. Misclassified contractors won't have an I-9 immigration form on file with the employer, leading to a $100-$1,000 fine per violation. And, they won't be properly counted in determining coverage under the Worker Adjustment and Retraining Notification Act ("WARN"), which can lead to up to 60 days' back pay and fines of up to $500 per day.

Independent contractors do not receive the benefits typically enjoyed by regular employees such as unemployment insurance, disability insurance, Workers' Compensation, and participation in qualified retirement or medical plans.

That's what led to big trouble for Microsoft. As a result of an IRS employment tax audit, Microsoft conceded that many of the company's freelancers and "permatemps" were really employees, for whom it had to pay withholding and FICA taxes.

Then, some of those workers filed a class action against Microsoft, claiming that they were also entitled to employee benefits, such as health insurance, vacation, sick leave, participation in a tax-deferred savings plan, and participation in the Microsoft employee stock purchase plan.

After nearly eight years of litigation, including three separate appeals, the case was settled in late 2000, with $97 million paid the class members and their attorneys.

Time Warner had a similar problem when it was charged by the Pension and Welfare Benefits Administration of The U.S Department of Labor with misclassifying hundreds of workers as contactors and temps. In late 2000, it paid a $5.5 million settlement to cover workers' benefits which it had not paid.

FedEx got a tentative tax assessment of $319 million from the IRS in late 2007 for failing to pay 2002 taxes and benefits for drivers, whom FedEx called contractors, but Government called employees. While the IRS withdrew this assessment a few months later, as of February, 2009 it was continuing its audit into FedEx's trucking operations. Meanwhile, more than 30 states have begun their own investigations into the employee status of FedEx drivers, and Massachusetts, for one, has fined FedEx nearly 200,000. The drivers themselves have filed more than 50 lawsuits challenging their contractor status, which have been consolidated into one big federal case.

Finally, if companies misclassify workers, employees of the company may have to pay taxes on their 401K contributions. That's because the law of ERISA prohibits misclassification of employees. If independent contractors are misclassified, the company's contributions to the plan are not tax deductible. Thus, plan participants lose the benefit of having tax deferred contributions for past years and have to pay taxes on the additional gross income.

Why we have these laws

Many independent contractors want to be classified as independent. They think the benefits of being independent outweigh the benefits of being an employee.

But some people who work as independent contractors may do so because they don't have any other options. They would love to be regular employees. Many of these laws were designed to protect them. If workers are employees in every way but name only, they are entitled to the same benefits as everyone else.

It's also fair to regular employees to treat workers consistently. Employee morale suffers if they perceive that contractors are doing essentially the same work as they are.

How the worker or the company characterizes the relationship is only one of many factors the IRS looks at in determining whether the person is truly an independent contractor. You can't classify workers according to their preferences. You must classify them according to the law, because these rules are designed to protect workers' rights.

Benefits of Using Independent Contractors

There are many advantages to companies to have independent contractors.

Companies bring in contingent workers to:

--Accomplish specialized one-time tasks
--Gain focused expertise for concentrated periods
--Create a flexible workforce adaptive to changing conditions
--Ramp up for short periods of increased activity

To managers, the benefits of independent contractors include:

--May not be counted against headcount
--Don't require training
--Aren't managed on a daily basis
--Have unique expertise employees don't possess.

Most companies encourage the use of contractors in appropriate circumstances. They depend on them!

What is an Independent Contractor

The law says that an independent contractor is paid for results. The company does not have the right to control and direct the individual who performs the services as to the details and means by which work is accomplished.

This means that managers must treat independent contractors differently than employees. In fact, a good first question to ask yourself is, "Do I treat them as if they're employees?" If yes, they probably are employees, not independent contractors.

In order for them to be independent contractors, you must show you do not have the right to control their work. Even if in fact you do not control their work, if you have the right to do so, they may be considered employees.

The second question to ask is, "Do they look like they're in business?" If not, again they probably are employees.

The IRS Factors

The IRS assumes workers are employees unless the company proves otherwise. The burden of proof is on the company. When in doubt, companies should classify workers as employees, not independent contractors.

The IRS has various factors it considers in determining whether someone is an employee or a contractor. Some relate to behavioral control, some to financial control, and some to the type of relationship.

How important each factor is depends on the occupation and the context. Not all or even most factors are necessary in order to find that someone is a contractor. All of the factors are weighed together and balanced. Not even the IRS is consistent in its interpretation of these factors.

There is no federal statute defining who is an “employee.” Rather, through years of court cases, a common law test has evolved. Under that test, a worker is an employee if the employer retains the right to control the manner and method by which the work is performed. There is no magic formula; rather, all evidence of control on the one hand and independence on the other must be considered.

According to the IRS, facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the nature of the parties’ relationship.

Behavioral Control

These factors show whether the business has the right to direct and control how the worker does the task. These include:

-- Training. Employees are often trained to perform services in a particular way. Independent contractors ordinarily use their own methods, and are not trained.

-- Instructions. An employee is generally subject to the business' instructions about how to work. Contractors are not. All of the following are examples of types of instructions about how to do work:

- When and where to do the work
- What tools or equipment to use
- What workers to hire or to assist with the work
- Where to purchase supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

Financial Control

Facts showing whether the employer has the right to control the business aspects of the worker's job include:

-- Business expenses. Independent contractors are far more likely to have unreimbursed business expenses than are employees. Fixed ongoing costs that are incurred whether or not work is being performed (rent, equipment leases, etc.) are particularly important.

-- Investment. Contractors often have a significant investment in the facilities and equipment used to provide services, while employees rarely do. (However, a significant investment is not necessary for independent contractor status.)

-- Availability. This is the extent to which the worker makes services available in the relevant market. A contractor is normally interested in making services available to many companies, and may advertise his/her availability, while an employee has a duty of loyalty to the primary employer and cannot generally work for competing firms.

-- Payment. Employees are generally paid by the hour, week, or month. An independent contractor is usually paid by a flat fee for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

-- Profit or loss. An independent contractor can make a profit or loss.

Type of Relationship

Facts that show the parties' type of relationship include:

-- Written contract. Any agreement with a contractor should describe the relationship the parties intended to create.

-- Benefits. If the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay, the worker is an employee.

-- Permanency of the relationship. If you engage a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that your intent was to create an employer-employee relationship.

-- Services as a key aspect of regular business. If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a technology firm hires a programmer, it is likely that it will present the programmer's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

In appropriate circumstances, your company can ask the IRS to determine a worker's status for federal tax and withholding purposes by completing Form SS-8 and submitting it to the IRS. Consult with your company's HR and/or Legal Departments before submitting ANYTHING to the IRS!

Other Factors to Consider

In addition to the IRS factors, state agencies may use their own criteria. For example, the unemployment office may consider workers to be employees if:

- they are not in a distinct trade or occupation.
- this type of work usually is done by employees.
- the work is not highly skilled or specialized.
- they have little or no meaningful discretion over how to do the job.
- there is no written contract showing the intent of the parties to create an independent relationship.

The equal employment opportunity statutes interpret "employee" more broadly, using what is called an "economic reality test." The Fair Labor Standards Act applies an even more liberal standard.

Because of all of these varying laws, companies usually develop their own list of factors to take into account in deciding how to classify workers.

There is one factor that is not listed in any law. However, the IRS routinely audits on this one factor: whether the independent contractor has worked at the company as an employee within one year of the contract assignment. If so, the IRS will assume the worker is not an independent contractor unless proved otherwise.

Recommended Business Practices

Once you've obtained approval for classifying a worker as an independent contractor, it's important to maintain the proper business relationship with the individual.

Don't manage contractors the way you manage employees.

DO NOT:

--give instructions
--send to training
--set hours of work
--require full-time work
--require work done on premises
--set the order or sequence of work
--require regular reports

Contractors are providing a service. Look to the results, not the methods.

Just as we wouldn't invite an outside delivery truck driver to the employee picnic, we shouldn't include contractors or temporary agency employees in these events either. That also blurs the distinction between employee and contractor.

As a general guideline, it's okay to include a worker in an on-site departmental or office function if the person happens to be on-site at the time of the event. Inviting them to off-site events is tricky: they should not be included in anything that is not directly related to their work, and they should rarely be sent to training. Off-site social functions should be reserved for employees. It is probably okay to include them in team-building events if they are the type of event that a valued supplier or customer might attend.

Manager's Options

If your proposed independent contractor doesn't meet the criteria, you have several options.

Option One: Structure the nature of the engagement so as to meet the IRS qualification standards.

For example, if they can work at their own offices most of the time rather than on the company's premises, you won't be setting the hours of work, the workers will be using their own tools and equipment, and they will be paying their own business expenses. Pay by the project, not by the hour, day or week, and you will meet another factor.

As a general rule, if workers are working 40 hours a week on one company's contracts, it will be unlikely that the availability factor will be met. However, if they are working at that company for less than a year, then those factors probably will be met during that year. Like everything else, the factors must be balanced. And remember, no one factor is determinative.

Option Two: Hire the individual as a regular employee.

Option Three: Lease the employee through an outside employment services or other company. This other company hires the worker as an employee, and handles all payroll taxes and daily management duties.

A variation on this option is to look for a vendor that could legitimately hire the person either as an independent contractor or as an employee. For example, an engineer could retire from the company and still be needed for expertise on a patent case. We can't make the engineer an independent contractor, but our outside law firm can.

The advantage of this approach is it's relatively easy. The disadvantages are:

- you have to communicate all directions, instructions and criticism to the agency, not to the individual,

- you can't fire the worker directly; you can only tell the agency you're dissatisfied and trust they will respond.

As long as you control workers, you are still their legal employer. Therefore, the leasing company should be hiring, giving assignments, setting the rate of pay (both to the company and to their employees) and firing.

Also, the outside company must be reputable and financially solvent. If it doesn't pay employment taxes or workers compensation premiums, the company may be held the legal employer.

Overtime Rules

One of the big growth areas in employment law in the past few years is enforcement of laws on overtime payments. In fiscal 2007, the Department of Labor's Wage and Hour Division collected more than $220 million in back pay, including overtime, for 350,000 workers.

The Fair Labor Standards Act (FLSA) covers overtime pay and the minimum wage. Here we will cover only the overtime provisions. For more information, visit http://www.dol.gov/esa/ or call the U.S. Department of Labor, Wage and Hour Division. They have offices in every major city.

The FLSA applies to all employees who work in enterprises engaged in interstate commerce. This includes virtually every private employer, as well as state and local governments. There are exceptions for agricultural workers on small farms, babysitters, fishermen, amusement park employees, cab drivers, live-in domestic help and employees who sell cars. However, these may be covered by your state's overtime rules.

Once you determine your enterprise or employees are engaged in interstate commerce, the next question is whether a particular employee is "exempt" or "non-exempt" from the overtime law. The FLSA requires employers to pay overtime only to non-exempt employees who work more than 40 hours a week.

The presumption made by the Department of Labor is that all employees are non-exempt and entitled to overtime pay unless proven otherwise. The burden of proof is on you to show they are exempt. The regulations on the "white-collar" exemptions to the federal overtime law were overhauled in 2004, the first time in more then 50 years that major revisions were made. These exemptions do not apply to manual laborers or other "blue collar" workers, or to police officers, fire fighter, paramedics and other "first responders," regardless of rank. These workers are always entitled to overtime pay.

Executive, administrative, and professional employees, outside salespersons, certain computer workers and highly-compensated employees are exempt from overtime pay under the 2004 regulations. These categories change as the law develops and require careful scrutiny of the job's functions to determine whether they apply. It is imperative that you properly reflect duties and responsibilities when a job in your area is under review.

For the first three categories, an employee must meet three tests to be exempt. First, an exempt employee must be paid at least a minimum amount – $455 per week, or $23.660 per year. Second, the employee must be paid on a "salary basis" – a predetermined amount each week, without deductions for the number of hours worked, with some limited exceptions. Third, the primary job duties must fall into one of three general categories: "executive," "administrative" or "professional."

"**Executive**" employees must have a primary duty of managing an enterprise, department or subdivision, and customarily and regularly direct the work of two or more other employees. "Management" includes activities such as interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; planning and directing the work of employees; maintaining production or sales records for use in supervision or control; doing performance appraisals; handling employee complaints and grievances; disciplining employees; determining the techniques, type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

The 2004 rules also require that executives have the authority to hire, fire, demote, and promote other employees or have their input into those decisions be given "particular weight." Factors to be used in deciding whether an employee's suggestions and recommendations are given "particular weight" include whether it is part of the employee's job to make such recommendations; how often the employee's input is sought, and how often the employee's suggestions are followed.

Under a special rule for business owners, an employee who owns at least a 20-percent equity interest, regardless of the type of business organization (*e.g.*, corporation, partnership, limited liability company, or other), and who is actively engaged in its management, is considered an exempt executive.

An employee's concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from the executive exemption. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. For example, an assistant manager in a retail establishment can supervise employees and serve customers at the same time without losing the exemption.

Exempt "**administrative**" employees must exercise "discretion and independent judgment" and work on management policies or general business operations. Work directly related to management or general business operations includes areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

The 2004 rules also require that the administrative employee exercise that discretion and judgment in "matters of significance," which means affecting the business in a substantial way or with a major financial impact. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered.

Exempt "**professional**" employees come in two varieties: learned and creative. To be a learned professional, the employee's work must be predominantly intellectual in character, requiring the consistent exercise of discretion and judgment. Further, the work must require knowledge of an advanced type in a field of science or learning customarily acquired by a four-year degree, such as the work done by doctors, lawyers, teachers, engineers, architects, and pharmacists.

Exempt creative professionals do work requiring invention, imagination, originality or talent, such as actors, musicians, composers, conductors, writers, and artists.

There is also an exemption for "highly compensated" employees. This exemption applies to those office or other non-manual workers who receive at least $100,000 per year if they also regularly perform <u>any one</u> of the exempt duties of an executive, administrative or professional employee.

Computer workers are exempt if they meet the $455 per week salary test or, if they are hourly workers, get at least $27.63 per hour for every hour worked. Exempt computer workers must have the primary duty of: (1) systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or (2) design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) a combination of the three categories.

The computer employee exemption does <u>not</u> include employees engaged in manufacture or repair of computer hardware and peripheral equipment.

Finally, outside sales people are exempt from overtime. There is no minimum salary requirement, but the outside sales person's primary duty must be making sales or obtaining orders or contracts, <u>and</u> the employee must be customarily and regularly engaged away from the employer's place of business.

In addition to meeting the exemption definitions above, exempt employees also must be paid on a salary basis. In the last few years, this has become a legal minefield for the unwary employer.

"Salary" means employees receive the same amount of pay every pay period, regardless of the quantity or quality of their work. In other words, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any week in which they perform no work. Deductions for absences can be made only for the following reasons:

(1) when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability;

(2) for absences of one or more full days for sickness or disability (including work-related accidents) if there is a sick pay policy providing compensation;

(3) penalties imposed for infractions of safety rules of major significance, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines;

(4) unpaid disciplinary suspensions of one or more full days imposed for infractions of written workplace conduct rules, including policies prohibiting harassment and workplace violence;

(5) when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay only for time actually worked; and

(6) an employer cannot make deductions for absences of less than a week because of jury duty, attendance as a witness or temporary military leave, but the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week. An exempt employee must be paid full salary if the absence for these reasons is less than 5 full days.

Assuming employees are entitled to overtime, they must be paid one and a half hours for every hour over 40 hours/week worked. Certain non-exempt government workers are allowed to get compensatory time off, or comp time. Comp time must be given at the same rate as overtime pay. In other words, you have to give one and a half hours off for every hour of overtime worked.

You are not required by law to give exempt employees comp time. If you choose to give it, you can give it at any rate you wish.

What if an employee works overtime without your permission? You must pay overtime even if it was not authorized. You must pay if you "suffer or permit" employees to work overtime. Your company is receiving some benefit as a result of the overtime, therefore you should pay for it. However, you can discipline the employees, up to and including termination, if they repeatedly violate your instructions not to work overtime.

How about on-call time? Exempt employees do not have to be paid for the time they are off duty but on call, nor do they get extra pay for responding to a call-in. That’s covered by their regular salary. Non-exempt employees do not have to paid while they are on call, so long as they are free to engage in personal activities. These principles also apply when an employee must carry a pager or cell phone and report to work within a specific, reasonable time period. The on-call time is compensable, however, when the on-call conditions are so restrictive or the calls so frequent that the employee cannot effectively use that time for personal purposes.

Every state except Louisiana has laws on working hours, and 38 states have their own laws about overtime. While most state overtime laws are the same as federal law, 18 states provide more generous coverage or differing duties tests than the new federal rules. Workers in Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Kentucky, Maryland, Minnesota, Montana, New Jersey, North Dakota, Oregon, Pennsylvania, Washington, West Virginia and Wyoming get to take advantage of whatever law—state or federal—gives them the most benefits. That's why it's important to get local legal advice on this issue. For a listing of current state minimum wage requirements, go to www.dol.gov/esa/minwage/america.htm. State laws on break and meal periods can be found at www.dol.gov.esa/programs/whd/state/meal.htm and www.dol.gov.esa/programs/whd/state/rest.htm.

For instance, in California, workers get time-and-a half for all time exceeding eight hours per day, and for the first eight hours on a seventh consecutive work day. Double-time is required for more than 12 hours per day, and more than eight hours on a seventh consecutive work day. Maine caps mandatory overtime at 80 hours in a two-week period, and Connecticut, Illinois, Maryland, Minnesota, New Jersey, Oregon, Rhode Island, Washington and West Virginia limit mandatory overtime for nurses or other healthcare personnel.

> ***practical pointers:*** Because the burden of proof is on you, it's important to keep accurate and complete records of an employee's working hours. If you don't have good documentation, you won't be able to rebut the employee's claimed overtime. Make sure you review employee job duties to make sure all eligible workers are getting overtime pay, since there are substantial penalties for employers who violate wage laws.

Although salaried exempt employees often resent keeping time records, it may be worthwhile to require them to do so, just in case later there is a question about their exempt status. But don't pay them based on how many hours they work, otherwise they're no longer considered salaried.

"Temporary" Help and the Law

At the beginning of the 21st Century, the American workplace looks a lot different than it did at the start of the 20th Century. Beyond the obvious change from an overwhelmingly white male workforce to one more reflective of the nation's racial, sexual, and ethnic diversity, you can no longer assume that the workers who report every day to the company's site are "employees."

From 1991 to 2001, the number of temporary agency employees nearly tripled, going from 1.5 million to 3.3 million. Flexibility, speed in deployment, cost savings, provision of specialty services—these are some of the reasons an employer might choose to use workers from a temporary agency or a contract firm.

But there are pitfalls for the unwary, too. Under the "joint employment" doctrine, the same worker could be considered BOTH as an employee of the staffing firm AND of the client company. What state and federal courts and agencies look at are the total circumstances and the economic realities of each situation. The most common considerations are the customer's right to hire, fire, supervise, and otherwise control the worker.

Outsourcing functions may not necessarily outsource liabilities. If the client is found to be a joint employer with a staffing firm, the client is jointly responsible for compliance with:

- Wage and Hour Laws
- Workers' Compensation
  To avoid this problem, make sure the staffing firm covers the workers under its WC policy
- EEO Laws
- Family and Medical Leave
  Both companies must count the worker for FMLA purposes, and the client cannot interfere with the worker's FMLA leave
- Labor Laws
  In 2000, the National Labor Relations Board held that unions can organize mixed units of temporary and "regular" employees
- ADA reasonable accommodations
  EEOC guidelines say that the staffing firm and its client can each be responsible for providing reasonable accommodations to disabled

temps, and the combined resources of the 2 employers must be evaluated when considering whether an accommodation presents undue hardship.

Tips for Managers

You cannot treat temps like regular employees, because they aren't. Here are some tips:

Manage temps through the agency. Do not put temps on performance improvement plans; the agency is supposed to manage performance. The agency should also handle all negotiations about the worker's pay, vacations and personal time off.

Do not include temps in general planning or training sessions. Limit their participation to meetings concerned with their particular project.

Temps don't belong at company social functions. Those are for employees and their guests. You can have a separate party for temps and contractors, if you want.

Don't give temps employee awards. Create a "Temp of the Month" program, instead and have the temp agency administer it.

Do not make promises of future employment at your company. Instead, refer the temp to publicly available job postings. If there is a "temp-to-hire" opportunity, contact the agency and ask them to inform the worker.