fiverr enterprise.

A Guide for Procurement Leaders

Navigating Freelancer Compliance & Workforce Classification

Table of Contents

CHAPTER 1

The Rise of the
Freelance Workforce

36% of the US workforce now considers themselves independent workers, made up of contract workers, freelancers, gig and temp staff.[1] For today's enterprises, that means 1 in 3 hires is already freelance talent, more than 73M people, and growing. The number of contingent workers is set to jump to more than 90M by 2028, making freelancers the majority of the workforce.[2]

There is a lot to be excited about when considering this shift. As a workforce strategy, hiring freelancers can add visibility to and often reduce an organization's overall costs, while eliminating the risk of unnecessary headcount.

1   McKinsey Research, Many more Americans have become independent workers, 2022

2   Edelman Intelligence, Estimated growth rate for freelancers 2017-2028

US civilian workforce by employment type, million

Total workforce **164**

Gig and contract, freelance and temporary **26**	Contract, freelance and temporary only **19**	Gig only **14**	Unemployed	Permanent workers **100**

36% of the US workforce is made up of independence workers

Chosen for their niche skills and expertise, enterprises often see increased performance and output, and can quickly choose the right person for the job without a lengthy and resource-intensive hiring process.

Payment terms can be more flexible, as freelancers can agree to +60 or +90 rather than +30, improving cash flow throughout the business.

The most important thing to manage when you're dealing with freelance talent is your level of risk. It's critical to make sure that you're correctly classifying your external workforce according to both your own internal policies and the relevant laws and regulations for the specific region. Any freelancer who is working for your company has to be onboarded compliantly, with all the right documentation in place, which can vary between engagements. Sourcing now means vetting, too — making sure that all new workers have the right skills, but also are able to compliantly work for your business.

Of course, the last thing you need is a compliance bottleneck. From worker classification to tax documentation — as a Procurement leader, you need to make sure that compliance doesn't slow you down.

CHAPTER 2

The Importance of
Freelancer Compliance & Workforce Classification

As the number of freelancers grows, the government has a vested interest in regulating this landscape, and paying greater attention to the employer-employee relationship.

If companies and organizations do not classify a worker as an employee, they don't pay taxes for that employee, including Social Security, Medicare, and federal income tax withholdings. This is money that is relied upon to provide a social safety net for the public, and so governments want to make sure that mistakes aren't being made that cost them in revenues. However, for a company, hiring freelancers can be 30% less expensive than hiring a full-time employee, providing them with a competitive edge they aren't going to be quick to let go of. Simply put, it's in the business' best interests to classify workers as freelancers, and in the governments' for those same workers to be employees.

It's also a matter of forward-thinking legislation. The government wants to ensure that as many workers as possible are covered by policies such as minimum wage, pension contributions and sick pay. Employees are preparing for retirement or illness by the simple fact of their employment contributions. In contrast, while freelancer relationships offer greater flexibility, they also open risk, which could lead to costs landing at the feet of the government over the long term, especially with an aging workforce.

This is not just about misclassification, as even those who are true independent contractors may need protection with getting paid accurately and on time, or being provided with a fair contract.

As a result, regulation has become increasingly strict for employers that lean on a contingent workforce rather than a pure-play employee model. Non-compliance can lead to steep fines and penalties, including extreme measures such as losing a business license or even jail time.

Classifying
Employees vs. Freelancers

One of the most complicated elements of workforce compliance and classification in the U.S. is that there is no one single criteria or rule that organizations can follow. Even when it comes to distinguishing between employees and freelancers, rules differ from state to state. On a federal level, the IRS, the DoL, and the National Labor Relations Board each have their own subjective definitions in place to decide whether a worker is a freelancer or an employee. [3] [4] [5]

Individual states are also increasingly implementing legislation to protect freelancers on a local level. Examples over the last few years include:

New York: The Protections for Freelance Workers Act (Freelance isn't Free) specifies the right to a written contract, payment within 14 days, and penalties for violations up to $25,000.[6] In July 2023, L'Officiel USA, a media company was found to be in violation, and was ordered to pay more than $275,000 in double damages to 41 freelancers.

California: AB5 and Prop 22 have codified how freelancers should be classified, starting with the assumption that all workers are employees unless proven otherwise, with certain exemptions such as some Gig workers.[7] Penalties can range from $5,000 to $25,000 per violation.

Illinois: Upcoming legislation in Illinois includes the Freelance Worker Protection Act, which will ensure freelancers are compensated within a reasonable time frame, make certain that contracts are signed, and protect independent contractors from any intimidation.[8]

With such a complex landscape at both a federal and state level, employers have a lot to consider when they onboard freelance talent. It's important to make sure that you don't subjectively classify a worker based on your gut feeling, or how they would like to be classified. Instead, there are a number of best practices and official tests that you can use, especially for classification purposes.

3 McKinsey Research, Many more Americans have become independent workers, 2022

4 Edelman Intelligence, Estimated growth rate for freelancers 2017-2028

5 National Labor Relations Board misclassification

6 NYC.gov, New York, Freelance isn't Free Act

7 Department of Industrial Relations, State of California, AB 5

8   Illinois, Senate Bill 2041, Freelance Worker Protection

The 20 Factor Test

Used by the IRS, this is also known as the "Right to Control" test. The more control your organization has over the worker, the more likely they are to be an employee. There are 20 factors, split into three categories. [9] Ask yourself, do you control the workers:

- Behavior? Including where they work, during which hours, or what tools and processes they use.
- Payment? This is the amount and the schedule, and if they pay for their own equipment and technology. It also covers if they have work from other clients.

Relationship? Under this category will be the receipt of benefits from your organization, and how the agreement would be terminated if necessary.

The ABC Test

Used in California, and modified for many other states, the ABC test is a good place to start when considering if workers are employees or independent contractors. It looks at three elements:

1. Is the worker free from the control and direction of the business?
2. Does the worker perform tasks that are outside the usual core function of the business?
3. Has the worker got their own independently established trade in the same area as the work they are completing?

For states that rely on the ABC test, all three must be marked as yes in order for the worker to be a freelancer.

The Economic Reality Test

Used by the Department of Labor, this test looks at the nature and degree of control the organization has over the worker's tasks, and the opportunity of the worker to gain profit or make a loss based on their work.[10] If there is no clear answer to these questions, further investigation covers the skill level of the worker, how permanent the relationship is between the business and the worker, and how integrated the work is to the core nature of the business.
In 2018, RPG Enterprise was ordered to pay more than $750,000 to 73 misclassified employees, made up of back wages, damages, and penalties.[11]

9 IRS 20 Factor Test

10 FLSA, Department of Labor, Economic Realities Test

11 Staffing Industry, RPG IC Misclassification case

CHAPTER 4

Understanding Compliance *in Freelancer Engagement & Contracts*

As we've seen above with state-level laws and regulations, misclassification is just one area to concern yourself with as a Procurement leader. Compliance increasingly means ensuring a fair contract and smooth freelancer engagement processes, so that you're two steps ahead of any changes to legislation, no matter where freelancers reside. You can split your requirements into clear steps for each stage of the relationship.

Sourcing: When sourcing, make sure you're searching via credible sources or marketplaces, all while keeping compliance in mind - thinking about local regulation and legislation for both parties.

Onboarding: Create well-drafted contracts and Statements of Work, complete with necessary documentation such as NDA or IP agreements to limit risk.

Data privacy: Consider whether freelancers will be handling PII or other sensitive data. How will you ensure this remains confidential and compliant?

Communication: Establish channels that allow freelancers to voice questions or challenge their classification. This will help maintain compliance, and trust.

Offboarding: Build policies for offboarding compliantly when an agreement ends. Revoke relevant system access and ensure accurate documentation.

CHAPTER 5

# Navigating Risk Mitigation in *Freelancer Management*

In order to stay on top of compliance risk when engaging with freelancers, companies need to make risk mitigation a priority. The risk of non-compliance is financial, legal, and even reputational.

Start by building a list of all workers that are not on the monthly payroll. This should include freelance talent, consultants, gig workers, and independent contractors of all kinds. Include the kind of work they complete, and where they are located. These details will help you classify them accurately.

You'll then need to make sure all workers have a signed contract that details the relationship, including remuneration, scope of work, and expectations. For tax management, it's best practice to have the right documentation to hand ahead of filing season, including W9 or W8-BEN forms.

It's critical to collaborate closely with departments such as HR, Legal and Finance to make sure you're getting compliance right. After all, hiring managers and HR are likely to be familiar with the details of the engagement and relationship, but may not know the local laws andregulations that are relevant. In contrast, Legal teams know exactly how to remain compliant, but may be unaware of freelancers in the company and the work they are completing.

| Procurement | Legal | Finance | HR |
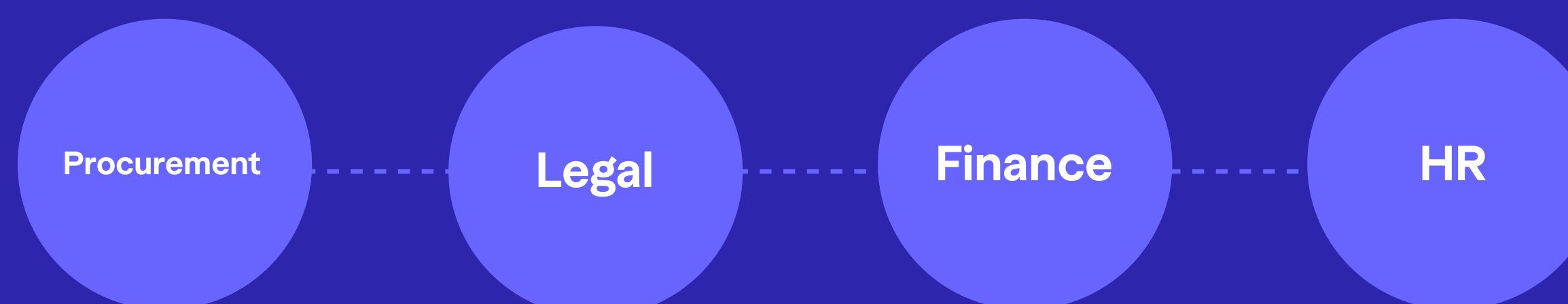
CHAPTER 6

Let Fiverr Enterprise Simplify *Your Legal & Compliance Processes*

As your company leans into the benefits that come with a freelance workforce, manual compliance processes can't be something that adds to your costs or slows you down. You need to be sure that the freelancers you're onboarding are fully compliant as well as skilled. As a Procurement leader, it's also extremely imperative that you know how to correctly classify your external workforce according to your company's policies as well as local laws and regulations.

Fiverr Enterprise automates and customizes legal and tax compliance at every stage of the external workforce lifecycle, supporting your specific business needs and company policies, in context so that your teams aren't weighed down by paperwork. With our freelance management system (FMS), we'll take the responsibility off your hands from three directions.
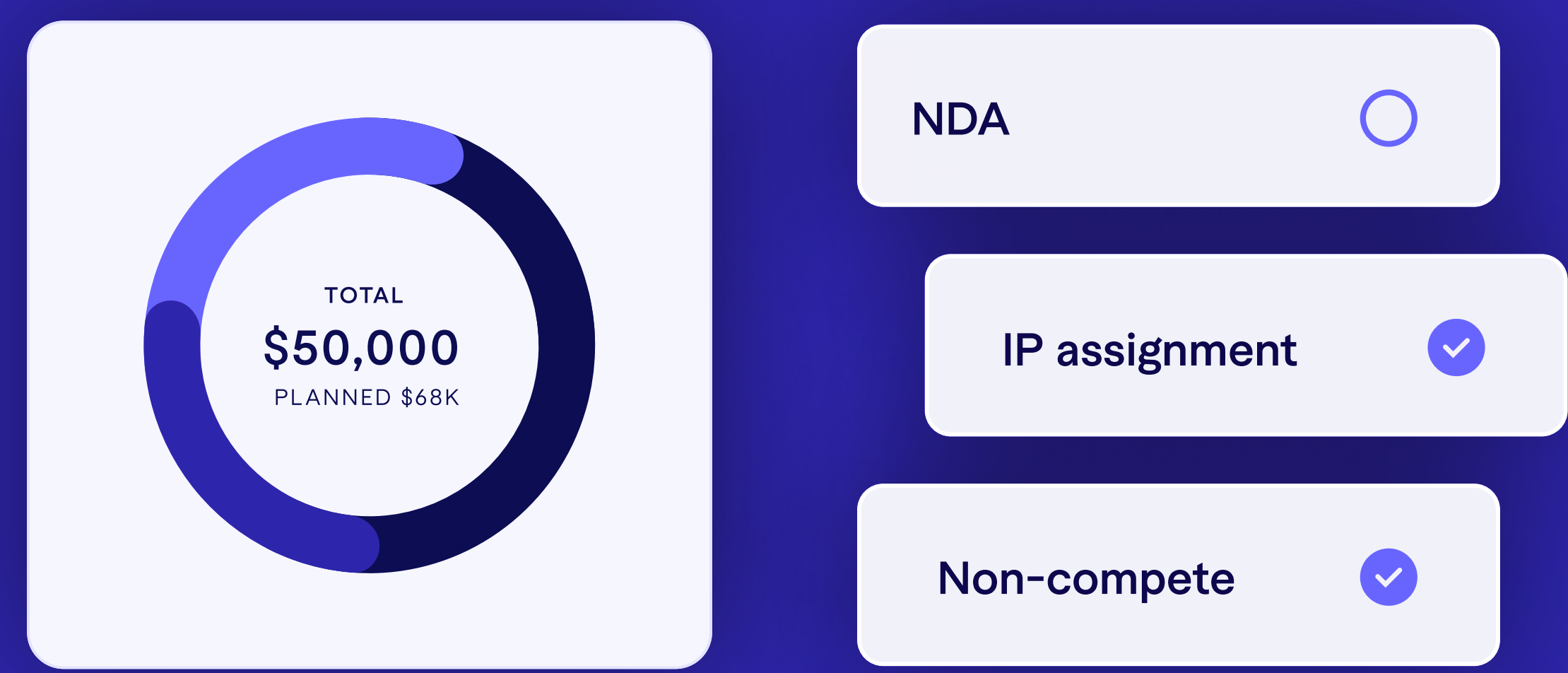
TOTAL
$50,000
PLANNED $68K

NDA

IP assignment

Non-compete

← **Web Developer**   Job details

Hudson Colton
Web Programming
⌖ Florida, USA

Robyn Hall
Software Developer
⌖ New York, USA
Contact   Hire!

Emma Wyatt
Data Processing
⌖ New York, USA

Hired Freelancers

	Web Developer	4	$12,200	Active
	Graphic Designer	3	$10,500	Active

1. Legal Documentation Made Easy

Our solution goes further than classification risk alone, and covers all areas of compliance, including taking responsibility and liability over legal and tax compliance. From tax forms and background checks, to NDAs and IP agreements, we take care of it all. Your own Legal team decides what documents your freelancers need to sign, and these are automatically sent via DocuSign. For example, those who need system access might be asked to sign an NDA, or those with a foreign entity will be sent W8 BEN-E.

Fiverr Enterprise then validates signatures and stores documents securely, sending you an alert when documentation is set to expire.

2. Your Liability Becomes Our Liability

Even when you invest time and effort, how can you be sure that you're compliantly managing such a large amount of freelance talent? Fiverr Enterprise takes care of the process, ensuring freelancers are classified accurately, gathering the right information with an automated onboarding workflow, and even submitting the right 1099 forms on your behalf.

We gather the right data on each freelancer, alongside the work they have been asked to complete by your company. By using location, entity structure, and the scope of work, our AI-engine means potential misclassification can be flagged before it becomes a problem. We alert you when risk occurs, so that you can take action and quickly mitigate the potential impact of worker misclassification or non-compliance.

By outsourcing compliance and tax readiness, you reduce risk when working with an external freelance workforce, and reduce those administrative headaches down to zero.

3. Automated Workforce Classification

Collect and manage all the information relating to your freelance workforce in a single place, and benefit from intelligent AI that analyzes your relationships and flags any weak spots. Based on thousands of previous classification cases, the AI identifies high-risk relationships, runs an automated audit, and then generates a detailed report with suggestions for eliminating that risk.

This process is continuous, so as the relationship evolves, so does your risk assessment. Simply put, if they're no longer compliant for your business, they're no longer working for you. At any time, a detailed report can be viewed at a glance to make sure that all compliance points are covered, from the right documentation in place for tax compliance, to legal compliance in terms of data privacy and system access, alongside foundational workforce classification.

With no impact on business agility, you have the peace of mind that you work alongside a fully-compliant contingent workforce, and that you have the audit trail to prove it.

STEP 1
Legal Documentation Made Easy

STEP 2
Your Liability Becomes Our Liability

STEP 3
Automated Workforce Classification

About Fiverr Enterprise

Fiverr Enterprise is a SaaS solution that gives you full visibility and control over your entire freelance workforce by allowing you to source, hire, onboard, manage and pay, all while ensuring compliance, so your teams can work faster and maximize business growth.

We automate and customize legal and tax compliance processes to your specific business needs, so your teams can move faster.

We will automatically monitor your relationships with your freelancers, including the validity of legal documents, and will alert you when risk arises, so you can take action and mitigate the risk of worker misclassification. From onboarding to offboarding, we give you peace of mind that every step of your freelance lifecycle is in order.

Want to learn more about how you can scale your freelance workforce with Fiverr Enterprise?

Schedule a 30-min call with one of our workforce experts.

Book a Demo

fiverr enterprise.