Is hiring a VA overseas legal? The contractor question, answered properly

Yes, and it is ordinary. But 'we signed a contractor agreement' is not the protection most owners think it is. Here is what actually decides it.

About 7 minutes to read

Engaging someone in the Philippines to do work for your business is legal in every market we operate in. Thousands of small businesses do it. The question that matters is not whether you can, but what the working relationship is, because that is what tax and employment authorities look at if they ever look at all.

> **The thing you will be told everywhere else**
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> "It's compliant as long as you have a contractor relationship." That is half right and it is the half that gets people into trouble. Calling someone a contractor does not make them one. Every major jurisdiction decides the question on the substance of the arrangement, and will happily disregard your agreement if the substance says otherwise.

What actually decides contractor vs employee

The wording differs by country, the substance barely does. Authorities look at control, integration and independence:

- Control. Do you direct how and when the work is done, or only what the outcome is? Set hours and step-by-step direction point towards employment.
- Integration. Are they part of your team in practice? Company email, your job title, your org chart, managed alongside your staff.
- Exclusivity. Can they work for others, and do they? Someone whose entire income is you looks less like a business.
- Equipment and risk. Whose tools, whose overheads, who carries the risk of a job going wrong?
- Substitution. Could they send a qualified replacement, or is it personally them?
- Payment shape. Invoices for outcomes, or a regular wage-shaped sum every fortnight?

No single factor decides it. A regulator weighs them together. What it means practically is that the more your VA looks and is managed like a member of staff, the weaker a contractor classification becomes. Regardless of what the contract says.

How this differs where you are

Market	What to know
Australia	Sham contracting provisions in the Fair Work Act carry penalties for misrepresenting employment as contracting. From 2024 the test looks at the real substance of the relationship, not just the contract terms. Also check whether superannuation obligations extend to a contractor working wholly for their labour.
United States	The IRS uses common-law control tests; the Department of Labor applies its own economic-reality test, and several states (California's ABC test especially) are stricter than both. A worker located outside the US changes the tax withholding position but does not automatically remove classification risk.
United Kingdom	IR35 / off-payroll rules apply mainly where the worker operates through their own intermediary company. Small companies are exempt from the client-side obligations, but 'small' has a statutory definition worth checking against your accounts.
Canada & New Zealand	Both apply control-and-integration tests broadly similar to Australia's. NZ courts have shown willingness to look past a contractor label entirely.

> **We are not your lawyers or your accountants**
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> This is a plain-language summary, not legal or tax advice, and it will not be current forever. Before your first hire, put twenty minutes and a small fee in front of an accountant or employment lawyer in your own jurisdiction. Every owner who has regretted this skipped that step.

The two ways to structure it

There are only really two clean structures, and the messy middle is where risk lives.

	Direct contractor	Employer of record
How it works	You contract the individual directly and they invoice you	We employ them in the Philippines and invoice you monthly
Classification risk	Sits with you. Manage the relationship like a contractor relationship	Sits with the employing entity, not with you
Best when	You want a clear arm's-length arrangement and are comfortable managing it	You want them integrated into your team like staff without carrying the classification question
Cost	Placement fee, then you pay them directly	Placement fee waived, monthly management fee on top of salary

This is the honest reason our Managed plan exists. If you want someone in your standups, on your systems and working your hours, which is what most owners actually want, that relationship looks a lot like employment. Having them employed properly by an entity in the Philippines resolves that, rather than papering over it.

Practical checklist

Before your first offshore hire

- [ ] Speak to your own accountant or employment lawyer about your jurisdiction
- [ ] Decide deliberately: arm's-length contractor, or employed through an EOR
- [ ] Put a written agreement in place that reflects what will actually happen
- [ ] If contracting directly: avoid setting fixed hours, avoid exclusivity, invoice against outcomes
- [ ] Check whether your local rules extend any obligations to contractors (super, insurance, leave)
- [ ] Confirm your business insurance covers work performed by an offshore contractor
- [ ] Put an NDA and a data-handling agreement in place before any system access
- [ ] Agree in writing who owns work product. This is easy to fix now and expensive later
- [ ] Keep the arrangement under review; relationships drift towards employment over time

The part nobody mentions

Philippine law also has a view. Your VA has obligations and entitlements locally. Registration as self-employed if contracting, or statutory benefits and 13th month pay if employed. A structure that is tidy for you and leaves them exposed is not a structure that lasts, because they will eventually take a job where it is handled. On the Managed plan we administer all of it.
