FOOTHOLD AMERICA

US EXPANSION · THE FIRST HIRE

Your First US Employee

Finding the person is the part most companies plan for. Behind the offer sit an employer of some kind, registrations in that person's state, two classification decisions that are expensive to get wrong, and a set of federal deadlines that start on the day they begin work. Here is the whole sequence.

3 business days to complete Form I-9

2 classification calls you must get right

$684 a week, below which overtime is owed

8 states mandate E-Verify for private employers

01 THE DECISION THAT COMES FIRST

How long this takes is decided on day one

Everything downstream depends on whether you are the employer or someone else is. The work is the same either way. What changes is who does it and how long you wait.

Incorporate, EIN, bank account · State registrations · Payroll, benefits, offer, onboarding

Neither route is wrong. An EOR gets someone selling or building while the decision to commit is still open. Your own entity is the right answer once the US operation is proven, or where equity, enterprise customers or US fundraising force the issue. The mistake is starting the entity in month one and discovering in month four that the candidate took another job.

02 THE SEQUENCE

Eight steps, in this order

Skipping ahead is what causes trouble. The classification decision has to be made before the offer goes out, and the state registrations have to exist before the first payroll runs, not after it.

01 Decide the route
Employer of Record, or your own entity. This one decision sets everything that follows, including how long it takes.
EOR: SAME WEEK · ENTITY: 2 TO 4 MONTHS

02 Stand up the employer
With an EOR there is nothing to do. On your own: incorporate, get an EIN, open a US bank account, appoint a registered agent.
ENTITY: 3 TO 4 WEEKS AT BEST

03 Register in the employee's state
Income tax withholding account, unemployment insurance account, workers' compensation cover, and paid leave schemes where the state runs one.
1 TO 2 WEEKS PER STATE

04 Classify the role
Employee or contractor, then exempt or non-exempt. Both answers have to be defensible in the employee's state, not just yours.
BEFORE THE OFFER GOES OUT

05 Make the offer
At-will offer letter, salary, benefits summary, start date, exempt status. Background check and work authorisation where relevant.
DAYS

06 Set up payroll and benefits
Federal, state and local withholding. Health cover with an effective date that matches the start date, not the following month.
2 TO 3 WEEKS

07 Clear the day-one paperwork
I-9 Section 1 on day one, Section 2 within three business days, W-4 and the state equivalent before the first pay run.
THE FIRST WEEK

08 Keep it current
Handbook written for that state, filings maintained, and a fresh look at obligations the moment you hire in a second state.
ONGOING

03 TWO CALLS THAT COST THE MOST

Classification is where the money goes wrong

Neither of these is a preference. Both are legal tests, decided on the facts of how the person actually works, and a title on an offer letter does not settle either one.

QUESTION ONE

Employee or contractor?

The IRS applies a common law test across three areas: behavioural control over how the work is done, financial control over the business side of the job, and the type of relationship including benefits and permanence.

- **Stricter in some states.** California, Massachusetts and New Jersey apply an ABC test, under which the worker is an employee unless all three conditions are met.
- **The usual mistake.** Engaging a US contractor to avoid setting up an employer, then directing their hours, tools and priorities like an employee.
- **What it costs.** Back employment taxes, unpaid overtime, interest and penalties, and the benefits they should have had. The IRS and the state can both come.

QUESTION TWO

Exempt or non-exempt?

Non-exempt employees are owed overtime at one and a half times their regular rate for hours beyond 40 in a week. Exempt employees are not. To be exempt a role must clear both of two hurdles.

- **The salary test.** At least $684 a week, which is $35,568 a year, paid on a salary basis. Highly compensated employees are treated more leniently from $107,432.
- **The duties test.** The actual job must be executive, administrative or professional in substance. Paying a salary does not make a role exempt.
- **State floors are higher.** California, New York, Washington and others set their own thresholds well above the federal one. The employee's state governs.

04 PAPERWORK AND DEADLINES

The clock starts on day one

These deadlines are not administrative housekeeping. Form I-9 paperwork violations alone run from $288 to $2,861 per form, and they are assessed per form rather than per incident.

WHAT	WHEN	DETAIL	SET BY
Offer letter	Before the start date	State that employment is at will, name the state, and say whether the role is exempt or non-exempt. Do not copy a notice period across from a contract written for another country. Writing one in creates an obligation you did not have.	Yours
Form I-9, Section 1	By the first day of work for pay	The employee attests to their identity and work authorisation. This is the employee's half and it cannot be completed before an offer is accepted.	USCIS
Form I-9, Section 2	Within three business days	You examine their original documents. The first day counts as day one. If the job lasts fewer than three business days, Section 2 is due on day one.	USCIS
E-Verify case	By the third business day	Only where a state requires it. Alabama, Arizona, Mississippi and South Carolina apply it to essentially all private employers. Georgia from 10 employees, Florida and North Carolina from 25, Tennessee from 50.	State law
Form W-4	Before the first payroll	Federal withholding certificate. Without it you must withhold at the single, no-adjustments rate.	IRS
State withholding certificate	Before the first payroll	Most states have their own version. A few use the federal W-4. This is separate from registering the withholding account itself.	State
New hire reporting	Shortly after hire	To the state directory of new hires. Deadlines are set state by state and are usually measured in days, not weeks.	State
I-9 retention	Three years from hire, or one year after termination	Whichever is later. Keep I-9s separately from the personnel file so an audit does not open the whole record.	USCIS

$288 **to $2,861 per I-9 form**
The penalty range for paperwork violations, current from 2 January 2025. Knowingly employing an unauthorised worker starts at $716 and reaches $28,619 per worker for repeat offences. These are the cheapest mistakes to avoid and among the more expensive to discover.

05 BEFORE DAY ONE

Five things that must already exist

Each of these takes longer than people expect, and none of them can be arranged retrospectively once the employee has started.

Payroll that knows the state
Federal, state and sometimes local withholding, configured before the first run. Getting this wrong is visible to the employee immediately.

Workers' compensation
In force in the state where the person works, from their first day. Mandated at state level and effectively universal.

State tax accounts
Income tax withholding and unemployment insurance, both registered. Obligations start the moment work is performed there.

Health cover from day one
With an effective date matching the start date. A month's gap is a real cost to the employee and it is noticed.

A handbook written for that state
Not a translated version of the one you use at home. The implied contract doctrine means a handbook can create promises you are then held to, and what is safe language in Texas is not necessarily safe in California. One document across several states is several different legal positions.

06 WHAT GOES WRONG

Four mistakes worth avoiding

01 Starting with a contractor to save time
It is the most common opening move and the most expensive. If you direct how, when and where the work happens, they are an employee, and calling the arrangement something else does not change that.

02 Assuming Delaware covers you
Incorporating in Delaware gives you no authority to employ anyone in the other 49 states. You register where the person works, and that starts the day they start.

03 Copying an offer letter from home
Notice periods, probation clauses and holiday entitlements written in out of habit become promises you have voluntarily made and can be held to. Employment is at will unless you write it away.

04 Budgeting salary and adding a little
Employer on-costs run from roughly 17% to 44% above base salary depending on the salary level and whether the employee takes single or family health cover. Plan for the whole number.

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Empowering Your Growth

Sources. USCIS, Form I-9 completion deadlines, retention and civil penalty ranges current from 2 January 2025. US Department of Labor Wage and Hour Division, Fact Sheet 17A, salary and duties tests for the executive, administrative and professional exemptions. IRS, common law test for worker classification and Form W-4. State ABC tests per California, Massachusetts and New Jersey law. Employer on-cost figures per SSA, IRS, KFF Employer Health Benefits Survey 2025 and Fidelity Q1 2026. E-Verify state mandates and the hiring sequence per Foothold America's Form I-9 and E-Verify guide and its first US employee guide.

Timeframes are typical and vary by state and by circumstance. General information for planning purposes, not legal or tax advice.