

CONTRACTS: WHAT YOU NEED TO KNOW

Most consultants solidify their consulting agreements by signing a contract with their client. Some consultants have a standard contract they use, while other consultants negotiate based on a contract their client supplies. Three years ago, the AICNCC partnered with the Beazley Group to put on the webinar, "[Contracts and Contract Provisions – Other Aspects to Consider.](#)"

Colleen Palmer, A&E Risk Manager with the Beazley Group, gave an excellent presentation about things to consider when putting together your consulting contract. As business picks up, it may be worth a review -- to determine if your contract includes everything to protect you, and best serve your client.. ■

AICNCC WELCOMES NEW AFFINITY GROUP IN BINGHAMTON

The Alliance of IEEE Consultants Networks Coordinating Committee (AICNCC) congratulates Vincent Socci, on forming the IEEE Binghamton Section Consultants Network Affinity Group. The new Binghamton Consultants Network became official on 28 February 2022. To give a personal welcome to any new network, check out the consultants page on IEEE-USA's website for contact information. IEEE-USA also offers step-by-step instructions about how to start a formal network. We encourage new consultants networks to register as Affinity Groups. After a group forms a network, it can take advantage of IEEE's branding and resources, and qualify for funding through IEEE Section rebates. If you don't see your consultants network's contact information listed on the IEEE-USA website, contact Daryll Griffin at d.r.griffin@ieee.org.





RESPOND TO POTENTIAL NEW RISKS IN YOUR CONSULTING PRACTICE

As technology changes, so do the potential risks in business. Simply making a change about how you communicate with clients could create a new exposure, for example. Here are just a few, potential risks to consider:

Cyber breaches and malicious software. Cyber-attacks and malware incidents are at an all-time high. If you keep client data and project work online, and often use mobile technology, you're at an increased risk of having cyber thieves compromise your information.

Intellectual property issues. If you provide proprietary services that include copyrights, trademarks, trade secrets, or patents to your clients — you could be at risk of lawsuits that question who owns the work, and how it's used.

Drone mishaps. If you use drones to survey land, inspect sites, monitor projects from afar, or other business services — an accident or breach of privacy could occur — subjecting you to increased lawsuit risks.

Web services. Providing IT services in today's world can be a challenge, especially if networks and servers go down; or other malfunctions that could lead to disruptions regarding clients' work, or loss of revenue.

Negligence. Everyone can make a mistake. As diligent and detailed as you are, a design spec could be off; material may be flawed; documents could be misplaced; informal advice may be misunderstood; a team member could miss something during inspection; and so on, increasing business risks.

If a claim is filed for any of these or other situations — and even if it is unfounded — the cost to defend yourself, your business, and your work could be costly. On average, a contract dispute suit will cost business owners approximately \$91,000 (Source: countstatistics.org).

Risk management is a process that touches all stages of the project, as do the risk management benefits of the IEEE Members' Choice Professional Liability Program. The Program includes these risk management features to support your business, at no additional cost:

- Contract reviews
- Pre-claim assistance
- Live quarterly web-based seminars
- Toll-free claim hotline
- *And, coming soon, the IEEE Risk Management Hub, containing many new, educational resources*



SHOULD I TAKE THIS W-2 PROJECT?

(This article is reprinted here, with permission, from the “Jump to Consulting” blog by Daryl Gerke, PE. Originally published 21 July 2021. This post is in response to a question posed by the AICN.)

A company posted a “consulting position” on the [IEEE-USA Consultant Finder’s Assignment Board](#) that sounded a lot like an employee (W-2) search. This posting prompted a discussion by members regarding whether this position was appropriate for the site, and whether a consultant should even accept a W-2 project.

The general consensus was it was okay, but several of us had caveats. Here is my response:

Agree re: the posting. Looks like a W-2 situation, but if that is acceptable to respondents, fine. But as has been pointed out, everything is negotiable.

I had that happen early in my consulting career, when a client responded to my quote (through a contracting firm) with a W-2. That was when the IRS first said it needed to know about technical consultants. The contracting firm changed that to a 1099 project -- after I provided proof that I had multiple clients, a web site, etc.

No problems, and it was all friendly. But I was willing to walk, if we could not reach an agreement.

As a result, we adopted firm policies of NOT accepting W-2s, non-compete terms, or guarantees. In 35 years, we never lost business, but sometimes it took a brief explanation. As independent consultants, we are free to run our businesses as we see fit.

My two cents... to each their own...

BTW, if you are an engineering consultant, check out the [IEEE-USA Consultant Finder](#). This service is sponsored by IEEE-USA/IEEE (Institute of Electrical and Electronic Engineers) — the world’s largest technical professional association. The fee is nominal, and it is an excellent way to reach those searching for technical consultants.

Full Disclosure — *I am a long-time member of both the IEEE and the AICN. I can recommend both for technical consultants.*

Editor’s Note: If other consultants have an opinion on this topic, I started a discussion on this topic in the IEEE Collabratec Consultant’s Exchange. ■



Chair's Comments

CONNECTING WITH LOCAL CONSULTANTS NETWORKS

BY CHRISTOPHER WILSON



In the past two years, the AICNCC has made concerted efforts to connect with local consultants networks. We seek to understand issues local networks are facing, to see if we can assist in anyway. In our exploration, we have learned many local chairs are having issues with getting their networks to meet,

and creating interesting meeting topics. In addition, some local chairs don't understand the AICNCC's role.

The AICNCC would like to assist with these matters, by holding a virtual meeting with all the local consultants network chairs. The first part of the meeting will be a brief presentation on how to run a successful local consultants network. The second part will be a question-and-answer session — where local network chairs can ask the AICNCC members' questions.

As we pull together all the details (date and time), we'll send out invitations to all the local network chairs. We want to make you aware that we're planning this meeting; and we hope many local chairs will be able to join us. ■

POTENTIAL NEW RULES FROM THE DEPARTMENT OF LABOR (DOL) MAY ADDRESS INDEPENDENT CONTRACTOR STATUS

The Department of Labor (DOL) is reexamining the misclassification of employees as independent contractors. The Department published a rule on this issue, *Independent Contractor Status Under the Fair Labor Standards Act*, on 7 January 2021, during the Trump administration. It delayed the rule on 4 March 2021; and then, withdrew it on 6 May 2021 — believing that it was inconsistent with the *Fair*

Continued on page 6 ►



PROFESSIONAL LIABILITY INSURANCE



CONSULTANTS INSURANCE SCORES HIGH MARKS

What is the IEEE Professional Liability Program; and how well does it serve consultants? The answers are forthcoming — but first, a bit of history.

In April 1995, the IEEE Member Group Insurance Program administrator mailed a survey to IEEE Consulting engineers regarding the overall benefits of membership. Of those who responded to the survey, the majority ranked professional liability insurance second only to major medical insurance as their top insurance priority. As a result of the insights gleaned from the survey, as well as other considerations, IEEE established its Group Professional Liability Insurance for Engineers in October 1996. Since then, member surveys have played a role in helping the professional staff and volunteers assess how members utilize insurance benefits and how they perceive the value and quality of what IEEE has to offer.

When the IEEE Professional Liability (PL) Policy, through certain underwriters at Lloyds of London, became available to members — it offered two categories of coverage: the ‘Self-Employed/Small Firm’ category for applicants who were self-employed, with annual billings up to \$2,000,000; and the ‘Moonlighting’ category — for members who were employed, but needed coverage for their self-employed practice with billings up to \$100,000. As the IEEE PL participation grew, the self-employed/small firm limit was raised to \$3M in billings in 2016.

In 2010, the business insurance product line expanded to include general liability (GL) insurance for members who purchased PL, and worked from home. Did a consultant give up their home office to accommodate a growing family; or did they lose a desk at their client’s office? No

problem. To support the needs of members in today’s economy, IEEE worked with underwriters to enhance the GL policy. Now, it also covers engineers who are leasing space in co-working, or shared office, situations.

The IEEE Professional Liability Insurance program also expanded to meet members’ needs for higher limits, and a wider variety of coverages, when it became a “choice platform” in 2015. IEEE approved the addition of two products from the Beazley Insurance Company. IEEE added the Architects and Engineers Professional Liability Policy, and the Media Tech Errors and Omissions Policy. The latter offers additional coverages particular to certain hardware and software risks. The Beazley PL Policy offers coverage limits up to \$5M for mid-sized firms; up to \$25M for large firms.

Risk Management and Claims

Members can qualify for a 10 percent premium credit by taking the IEEE tutorial, “Risk Management for Engineers,” through the IEEE Learning Network. The Beazley policy has a comparable rate discount for members. Beazley also offers its policyholders additional savings opportunities through their risk management education webinars. IEEE insured members, like all professionals, do incur some claims. To help insured members prevent claims, risk management resources are available. These support services may include consulting contract reviews and live, quarterly, web-based seminars. New in 2022 is the [Risk Management Portal](#), featuring articles, videos, tips sheets, and other resources to assist with questions about coverage, contracts and risk concepts.

Member Satisfaction

IEEE requires our insurance administrator to assess member satisfaction with the products and services it delivers. In the case of professional liability, surveys are conducted in real time, to capture immediate perceptions of the insurance-buying experience. The administrator also collects data from all PL applicants about their areas of practice; and asks members to rate their satisfaction with the agents, communications, and the overall program.

Method: The satisfaction survey is distributed via email to all members who submit a new or renewal application for Professional Liability coverage; and who also have a

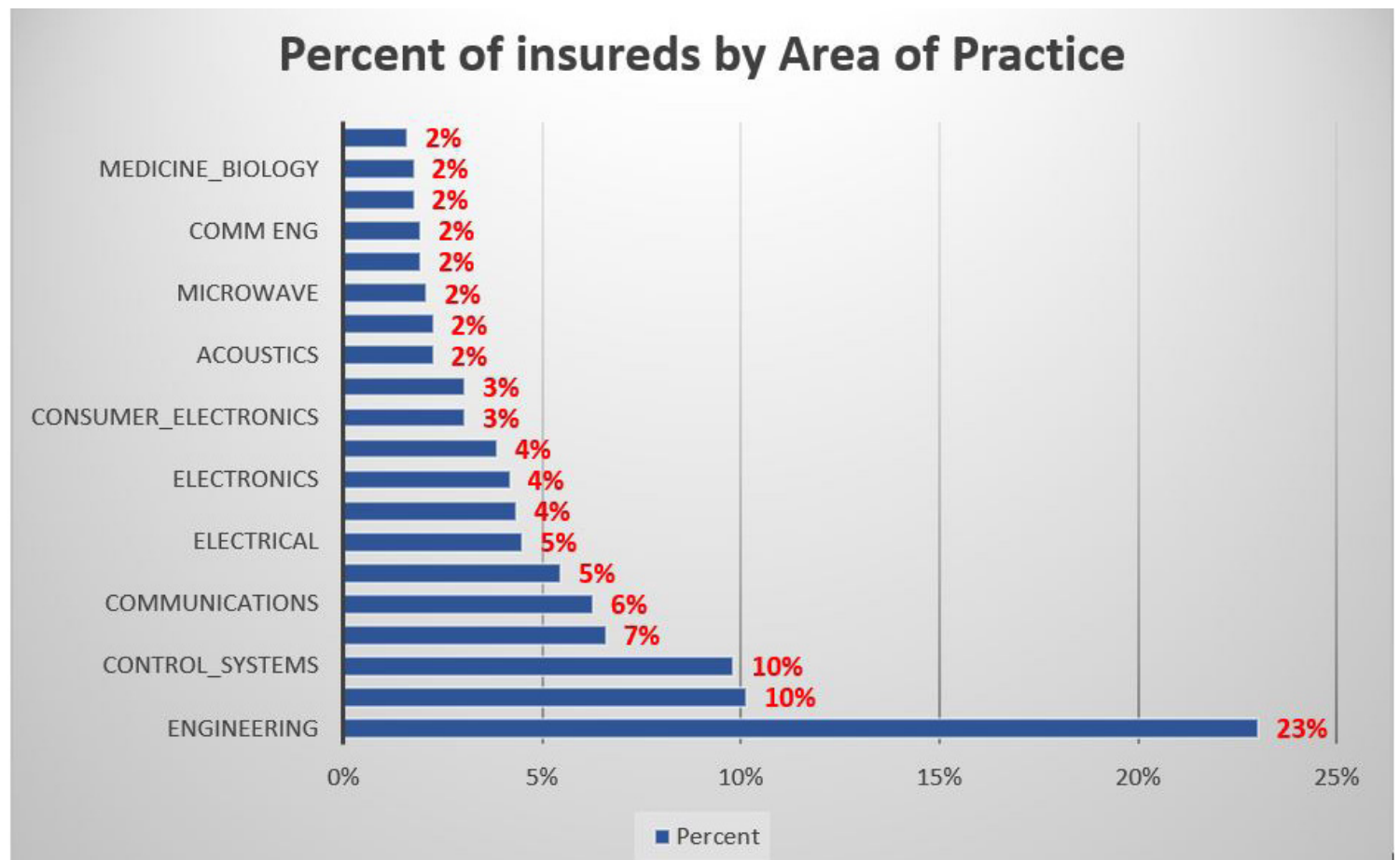
file marked as “closed,” whether the quote is accepted/not accepted, or the customer is declined.

The survey takes less than two minutes to complete. It asks members to keep in mind their most recent experience pertaining to the Professional Liability Insurance Plan. The survey is executed with the utmost attention to data security and privacy.

Scores

Insured members tend to work in some industries more than others, according to data from all PL insurance applicants between 2019-2021.

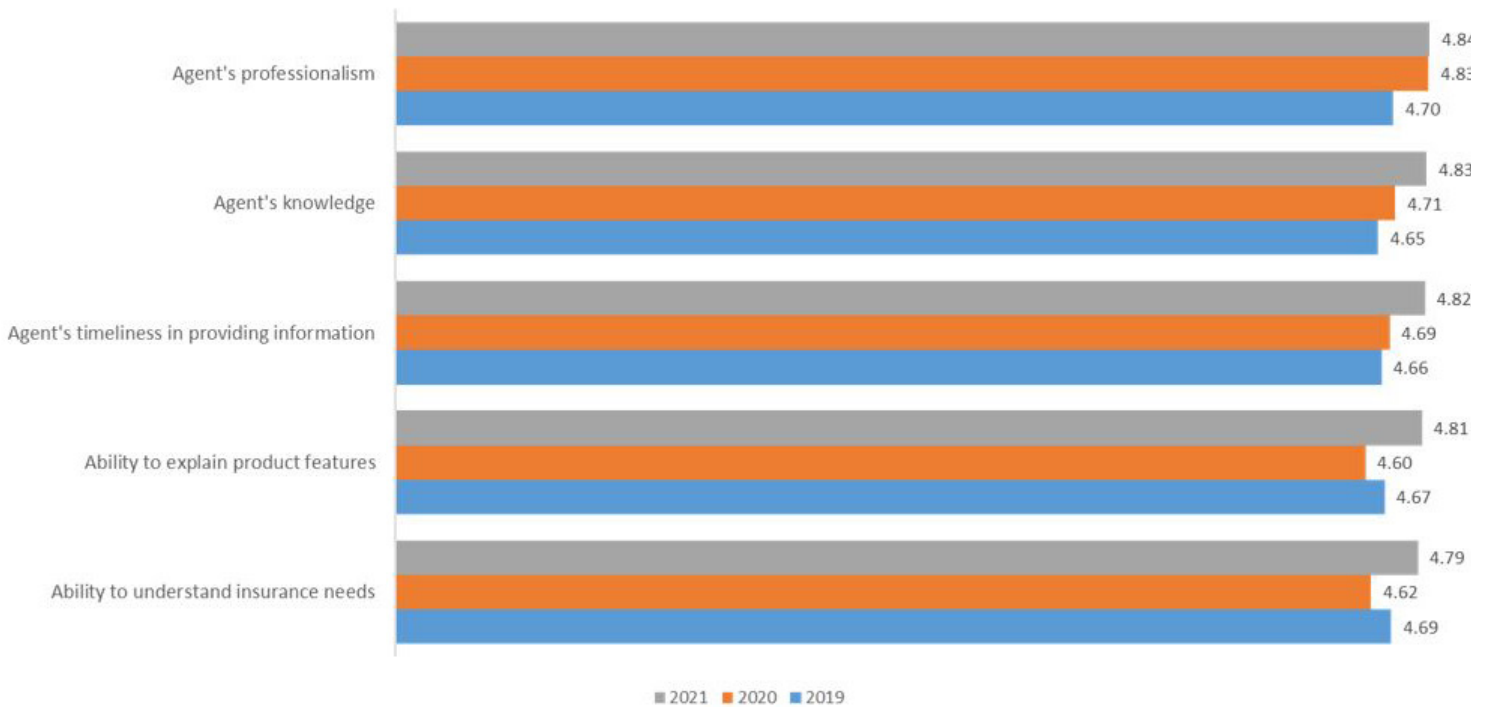
Percent of insureds by Area of Practice



The top five areas of practice for those who applied for PL insurance are engineering, control systems, communications, electrical and electronics. Many consultants list multiple areas of practice, because of the work that they do — including medicine/biology, vehicular and aerospace consulting. Members also stated they offered a variety of specialized consulting services related to power, as well as energy-related fields, such as the Smart Grid, power

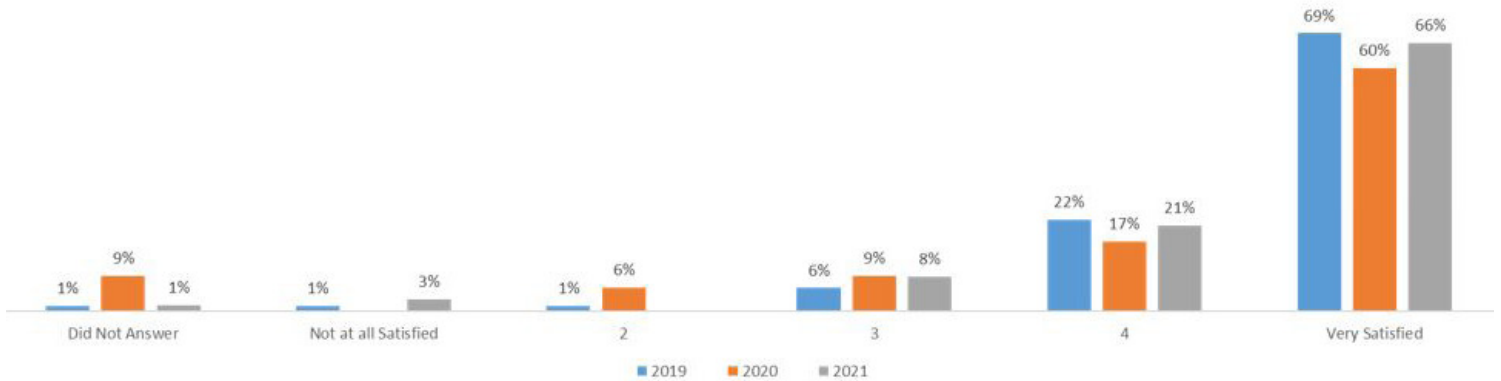
sources for devices, and various types of testing. Other popular consulting work pertains to the control systems used in various applications. Additionally, IEEE consulting engineers serve industry and branches of the armed services.

How would you rate your experience with the Mercer Consumer insurance agents?
(Using a scale of 1-5 with 1 being not at all satisfied and 5 being very satisfied.)



While insureds and prospective insureds have **consistently rated the agents with high scores**, the average score has improved from 2019 to 2021.

87% of responders in 2021 ranked the communication material received from Mercer Consumer as a 4 or 5.
(1 being not at all satisfied and 5 being very satisfied)



Members gave high satisfaction marks to the communications materials they received during the PL insurance purchase or renewal process.

88% of applicants between 2019 to 2021 chose 4 or 5 on a 5-point scale, when asked how likely they are to recommend this product to other members.

How likely are you to recommend this product to another IEEE member?
(Using a scale of 1-5 with 1 being not at all likely and 5 being very likely.)



IEEE consulting members; and those considering the opportunity to become self-employed, or even to undertake a single consulting project, can learn more about their exposure to risk and ways to mitigate exposures with contracts and insurance, in addition to prudent business practices. These resources can be found at <https://www.ieeeinsurance.com/ieee-plrm.html>. Information about the professional liability insurance and related policies, as well as the online application for coverage, are at <https://www.ieeeinsurance.com/ieee-us-refresh/professional-coverage/professional-liability-insurance.html>.

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◀ Continued from page 1

*Labor Standards Act's (FLSA) text and purpose. However, on 14 March 2022, a district court vacated the DOL's rules, to delay and withdraw the *Independent Contractor Status Under the Fair Labor Standards Act* rule. As a result of the court's decisions, the Trump administration's rule went into effect on 8 March 2021; and it remains in effect.*

The DOL now plans to engage in a new rulemaking — to replace the existing rule on employee or independent contractor status.

IEEE-USA remains committed to ensuring that employees are recognized correctly when they are, in fact, employees — so they receive the protections the FLSA provides. At the same time, we recognize the important role legitimate independent contractors play in our economy. DOL held public forums in June to hear diverse perspectives from those who may be affected by employee or independent contractor classification.

The DOL has not indicated what their new rule will look like, although there are concerns that the agency may try to implement some, or all, of the “ABC” test seen in California's AB5. That law has had a negative impact on consultants in California; reduced the number of consulting jobs available; and has driven some consultants out of California. IEEE-USA is concerned that a national “ABC” test law could also harm technology consultants — this time — all across the country.

Please click this [link](#) to read their full press release.



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[ieee.org/membership](https://www.ieee.org/membership)

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CHAIR'S COMMENTS

BY CHRISTOPHER WILSON



UPCOMING IN-PERSON CONSULTANT WORKING IN ARIZONA

The AICNCC is partnering with the recently reestablished IEEE Phoenix Section, Consultants Network Affinity Group, to hold an [in-person workshop](#) on 12

November. This workshop is appropriate for all career levels of consultants. It will cover the basics of those just starting out to becoming an entrepreneur. We especially encourage consultants from Arizona and surrounding areas to attend — not only to gain knowledge of your chosen profession, but to help establish a thriving consultant community in your area —to network and learn from one another. [Register today](#), and we'll see you in November.

20 OCTOBER WEBINAR

I also want to highlight an upcoming webinar by IEEE-USA's Interim Managing Director/Director of Government

Relations, Russ Harrison. This is an important overview of a possible U.S. Department of Labor rule — where they may try to make the ABC Test apply to the entire country. California has already implemented this test; and is using it as a criterion for classifying an individual as a consultant. This rule has definitely had an impact on California's consulting community.

I encourage all consultants to attend this important webinar, [New Rules Defining "Consultants" Could Affect Technology Contractors Nationwide](#) on 20 October.

IEEE-USA CONSULTANT FINDER

Lastly, I do want to encourage those that have subscribed to the IEEE Consultant Network Membership Premium (i.e., The IEEE-USA Consultant Finder) to renew their subscriptions. The more consultants we have in this listing, the easier it is for staff to market this product as a viable option for businesses to use when needing a consultant. Of course, we want new subscribers, as well. If you have not already, we urge you to [subscribe](#). Our goal is to double subscribership in 2023 and make this product more marketable to business. ■

CONSULTANT RESOURCES

WHY COMPANIES HIRE CONSULTANTS

All companies have their own reasons for hiring consultants. IEEE-USA came across a great article, explaining why companies look to bring on an expert outside of the company to accomplish a specific task.

[How To Successfully Hire And Work With An Independent Consultant?](#) takes you through the basic process of how companies evaluate whether to hire a consultant.

Another story consultants may find useful, discusses the best financial apps for consultants. [The Best Finance Apps for Small Business Owners](#) outlines the best apps for budgeting, taxes and investing. ■



MEMBER DISCOUNTS



A CONSULTANT'S GUIDE TO MEMBER DISCOUNTS

As a consultant, do you wonder what IEEE can do to help your business and your bottom line? IEEE Member Discounts offers a wide range of name-brand discounts that self-employed members can appreciate, whether they work from a home office, a corporate site, or even a stand-alone office. If you are paying for space, equipment, shipping, cybersecurity, or equipment protection — then these savings could add up significantly for you over the course of a year.

Speaking of office configurations, one of the new member discounts is for office space. Whether you have outgrown your spare room at home; would prefer to work out of a professional space to host a meeting; or you prefer a hybrid flexible workplace model, the International Workplace Group (IWG) can offer you a variety of lease opportunities and coworking environments. IEEE negotiated a discount with IWG — because it has a diverse portfolio of brands (Regus, Spaces, Signature, and more); offers flexibility and choice to members through thousands of conveniently located sites; as well as lease options, ranging from an hour's coworking, to multi-year leases. IEEE members worldwide can receive a 10% discount within the first 12 months of a new contract, on selected workspace solutions. Visit <https://www.iwgplc.com/Partner/IEEE> for details.

Costs are rising in every area of the economy, and small businesses feel the pinch. Fortunately, IEEE members can save on shipping with discounts from UPS®. In terms of how frequently it is used, this discount is one of the most

popular. Recently, members who used the UPS discount shipped approximately 24,000 items.

From small packages, to pallets, or anything in between, you don't need to be a frequent shipper to receive significant savings. The member rates are **50% off** Domestic Next Day/Deferred, and **30% off** Ground Commercial/Residential rates. To take advantage of member pricing, and to explore the variety of shipping services and tools that can help your business, visit <http://www.save-withups.com/ieee>; or call **1-800-MEMBERS (+1 800 636 2377)** to enroll and start saving.

No business can run without technology. IEEE members can save on Dell Small Business Systems. This program is well-utilized, and it is one of our most longstanding discounts, started in 2012. Dell provides a standard discount that will not be less at any retailer, for products on the designated site — as well as special, additional savings opportunities offered frequently. Dell Small Business representatives can assist with configuring a system; and most purchasers do work with a rep, rather than simply ordering online. The discounts are now available to members in the United States, the United Kingdom, Northern Ireland and Canada. See www.ieee.org/discounts for the Dell access information.

All the technology, from your computers to your phones are an investment. Perhaps you purchased a protection plan for each item at the time of sale. Those individual plans can be pricey and can have large out-of-pocket

deductibles or inconvenient requirements for repairs to damaged equipment. TechProtect™, a blanket protection plan offered to IEEE members through the Member Group Insurance Program, is a nice solution. TechProtect™ has a choice of coverage levels; it covers multiple devices from phones to game consoles, to computers, and more — with one low deductible. Visit [TechProtect™](#) for additional information.

In addition to the risk of physical damages to devices, there is the ongoing risk of identity theft, or financial fraud, and even reputation harm in social media — due to hackers. Due to the criminals' persistent and ever-evolving tricks, it is not sufficient to password protect accounts. Your sensitive information, your family and your clients' information could be at risk. IEEE now works with Aura Identity Guard, to provide a discount on their cyber security package. While this brand is not promoted as ubiquitously as

some of its competitors, Aura Identity Guard states that it “protects you from digital threats by helping stop identity thieves, protecting your credit and financial accounts from criminals, and helping stop hackers from getting into your phone or computer.” Additionally, the product offers alerts, resolution services, and covers up to \$1M for any losses.

Visit <https://offers.identityguard.com/ieee>; or call + 1 855 443 7748, to sign up for, and take advantage of, the 60-day free trial.

Do you have a suggestion for a product or service discount that members would appreciate? IEEE will consider suggestions for new, potential discounts.

Write to us at <https://www.ieee.org/membership/discounts/poll.html>. ■



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RENEW YOUR SUBSCRIPTION TO THE IEEE-USA CONSULTANT FINDER

You still have time to renew your subscription for the [IEEE-USA Consultant Finder](#). IEEE Collaboratec powers the IEEE-USA Consultant Finder for IEEE members.

This service's key features include:

- Simple and advanced search features
- An assignment placement portal
- A full consultant profile for paid subscribers

In addition, the IEEE-USA Consultant Finder's visual design makes it easy to use. It also has web crawlers, so even more potential clients will be able to find this new website — and the individual consultant profiles. Lastly, the Finder has opened this service fully to international independent consultants (those outside of North America) to post their profiles and market their services.

Since Collaboratec powers this service, all IEEE members have access to the Finder. Moreover, clients, project managers and HR professionals can search for consultants to hire — for free! All IEEE members considering, or jumping into, the world of the gig economy should check out the IEEE-USA Consultant Finder for marketing their services.

The IEEE membership renewal period is the best and easiest time to get started. When you renew your IEEE membership, just add the [IEEE Consultants Network](#)

[Membership Premium](#) to your cart. This step allows your IEEE Collaboratec profile to be listed in the IEEE-USA Consultant Finder.

The visual upgrade makes the Finder easier to use; and it will attract even more clients, project managers and HR professionals to search for a consultant; or post a consulting, or contract assignment. IEEE-USA is also actively trying to promote this service to professionals through Google ad words, as well as constantly updating Search Engine Optimization (SEO) tags.

We look forward to your continued support of this product with your renewed subscription. IEEE-USA knows this service will benefit all IEEE independent consultant members and their consultant practices.

Please note: Current Membership Premium subscribers — it is now a great time to review your consultant profile. Log in via IEEE Collaboratec (or the IEEE Collaboratec App) — and consider adding, or updating, your photo; reviewing your biography; and updating your desired salary, or hourly rate.

Welcome to the [IEEE-USA Consultant Finder](#). And thank you to those that have already subscribed to this great service. For IEEE consultants who have not yet subscribed, be sure to take a closer look — don't miss this great opportunity! ■

IN-PERSON IEEE CONSULTANTS NETWORK WORKSHOP

12 NOVEMBER 2022 | 7:30 AM - 2:00 PM (MST) | @ ARIZONA STATE UNIVERSITY

The IEEE-USA Alliance of IEEE Consultants Networks Coordinating Committee (AICNCC) and the Phoenix AICN Chapter is hosting a Workshop that will cover a wide range of topics addressing the Valley consulting market. The workshop will include sessions that address the major aspects of successful consulting firm operations. Advanced topics will include Processes for Tools for Growing a Consulting Firm, Selecting a Consulting Specialty, Identifying the Niche for Your Business, Evolving Business Requirements, The Effective Launch and Entrepreneurial Activities Surrounding Your Consulting Firm, Organizing and Marketing the Firm, and The Effective Use of Professional Networks. Register at <https://events.vtools.ieee.org/m/323822>. ■



IEEE★USA Livestream Webinar

New Rules Defining "Consultants" Could Affect Technology Contractors Nationwide

Thursday, 20 October - 1 PM ET



Russell Harrison

UPCOMING WEBINAR: NEW RULES DEFINING “CONSULTANTS” COULD AFFECT TECHNOLOGY CONTRACTORS NATIONWIDE

On 1 January 2020, California implemented a new criterion for classifying an individual as a consultant. The new test, called the ABC Test, has proven to be a challenge to some technology consultants in that state. An informal survey of Californian IEEE consultants has shown that 25 percent of consultants have lost work because of the new rule. Additionally, a number of IEEE members have reported leaving California to avoid the law. Others have given up their consulting businesses.

Now the U.S. Department of Labor may be trying to make the ABC Test apply to the entire country.

Join IEEE-USA's Director of Government Relations for a discussion about what the ABC Test is, why it is a challenge for technology consultants, and the prospects for it becoming a national rule. We will also discuss ways IEEE member consultants can help protect themselves from the test.

- When: Thursday, 20 October 2022 -- 1 PM ET
- Register Today: <https://events.vtools.ieee.org/m/324820>

CHAIR'S COMMENTS: CHANGE IN LEADERSHIP

BY CHRISTOPHER WILSON



My time as chair of the AICNCC has come to an end. I've had the honor of leading this Committee for the past two years. In those two years, the AICNCC has had a number of notable accomplishments. The first is providing leadership and guidance to consultants through our newsletters, webinars and reports during the pandemic. Second, this committee has made tremendous inroads connecting with local consultants networks — resulting in the Fall 2022 Virtual Meeting, with

all local network chairs invited. Third, the AICNCC provided IEEE-USA with guidance to address a number of consulting policy issues arising of the past few years.

Long time Chair of the Western North Carolina Consultants Network, Charles Lord, will be taking on leading the AICNCC. He has a very progressive agenda that will benefit all IEEE consultants.

Thanks for all the support the consultant community provided me these past two years.

I look forward to continuing my work with AICNN in the future. ■



2022 IEEE-USA CONSULTANTS FEE SURVEY: CONSULTANT RATES UP \$30 OVER PAST TWO YEARS

BY PAUL LIEF ROSENGREN

IEEE-USA has released its [2022 Consultants Fee Survey Report](#), including rich statistics from a survey of IEEE-USA members — who reported that more than half of their income came from consulting.

The report includes information and trends on how much consultants charge by region, years of experience and educational levels, as well as information on the impact of supply chain disruptions on consultants' work.

The median rate consultants charge continues to rise — now at \$180 an hour, up \$10 over the previous year — and \$30 more than just two years ago.

The survey's findings include:

- Fee-based consultants holding a Ph.D. or an MBA had a \$20 higher median hourly rate (\$200 an hour) than overall respondents. Eighteen percent of respondents had Ph.D.s, while one-third hold Masters degrees.

Continued on page 2 ►

◀ Continued from page 1

- Consultants specializing in Power and Communications charged the highest median rates (\$200 per hour).
- Those having five or fewer years of experience charged \$140 an hour on average, while those with 25 years or more charged a median of \$200 per hour.
- Just more than 10 percent indicated that they have had difficulties collecting bills. This figure has remained consistent over the past two surveys.

As in the past, regional differences were apparent in rates charged. Respondents working in the Middle Atlantic, South Atlantic, and Pacific regions reported charging higher median hourly rates; while those in East North Central and West South Central reported charging below the countrywide average. Charts showing responses from each region, with decile breakdowns, are included in the report.

While supply chain disruption negatively impacted the economy, these disruptions provided opportunities for IEEE members — including requiring redoing or redesigning work to account for new supply chain constraints.

Respondents indicated supply chain disruptions caused them to:

- Create multiple designs with different components
- Widen the pool of suppliers
- Redesign and replace components with ones more readily available — on occasion necessitating the lowering of quality and safety standards
- Increase communication with clients on supply chain issues
- Stretch out timelines and project schedules
- Change design flow and accelerate design

The Report indicates that most consultants' business comes from repeat clients (an average of 62% of total dollars earned). The Report notes, however, that "having outside connections is also important, as significant earnings come from referrals from clients, friends and networking contacts." The Report also points out that social media or Google advertising do not play a major role in attracting clients for most consultants.

Further, the Report shows that consultants billing methods have remained relatively constant — with 74% of respondents reporting that they bill hourly; 22% bill a fixed price for work; and 4% percent bill on a daily rate.

The most common areas respondents offer consulting services are in:

- Systems Engineering (31%)
- Project Management (27%)
- Expert Witness (25%)
- Electrical Power Systems (25%)
- New Product Development (22%)
- Management (21%)
- Technical Writing (21%),
- Communications (21%)

According to the Report, "There has been very little movement in these most common areas of expertise since 2018. Systems Engineering has been the top category for the past five years; and Project Management has been second for four out of these five years — and among the top three for all five years."

The area with the greatest increase since last year was Failure Analysis — mentioned by 10.2% of the consultants in 2021; and 17.0% in 2022.

The Report gives a detailed breakdown of 96 areas of consulting, as well as year-to-year response rates for each, is given in the report.

This year, the IEEE-USA Alliance of IEEE Consultants' Networks Coordinating Committee (AICNCC) asked respondents to provide recommendations on actions IEEE-USA could take to assist fee-based consultants in their consulting practice. Recommendations submitted were mostly in the areas of helping make connections; increasing availability/awareness of resources; and providing advocacy at both the federal and state levels.

The complete 2022 IEEE-USA Consultant Fee Survey Report is available for purchase from the [IEEE-USA Shop](#). The Report is \$29.95 for members. Non-members pay \$49.95. ■

*Paul Lief Rosengren is the coauthor of *In the Time of Covid: One Hospital's Struggles and Triumphs*. He worked for more than three decades in corporate communications at NBC, PSE&G, BD and in state government. He has a Master's in Public Policy from The Kennedy School of Government, Harvard; and an undergraduate degree in political science from Dickinson College.*

ELECTRICAL AND ELECTRONICS ENGINEERS PROFESSIONAL LIABILITY INSURANCE INSIGHTS

Limit Your Risk through Careful Contracting

One of the most common reasons for a dispute over an alleged design error is disagreement over what is required by the contract.

Contractual issues very often result from a problem with documentation: either no contract at all, or a poorly-drafted contract. A thorough, well-drafted contract may be your best asset in the event of a design dispute.

What's important when entering into a design contract, including a contract where design obligations are imposed on a construction contractor/subcontractor?

- **Always** have a written contract, making certain it addresses the various issues that may come up. A simple purchase order is insufficient, as it does not address the many contingencies that may arise.
- Communicate with your customer to define your duties and meet their expectations, as possible.
- When you can, provide your own contract form, understanding what local and state laws require, along with local custom and practice.
- Take the time to read and understand the contract.
- Make certain the contract is executed by both (or all) parties, and keep a copy of it.
- Keep copies of any communications that may impact the contract, including (but not limited to) correspondence regarding your scope of work, change orders, etc.

What are some of the most important contractual provisions to consider?

- **Scope of Work:** Thoroughly setting out your scope of work (both what you are doing, and what you are **not** doing) is critical. Fully discuss and make certain both parties are aware of the contractual scope of work — before you enter into the contract. Where possible, include the scope of work as an exhibit to the contract so that the scope can be described fully and thoroughly.
- Do not rely on contractual provisions that, in turn, require your compliance with another

contract (for example: As a subcontractor, do not consent to a scope-of-work clause that requires you to comply with the terms of the primary contractor's agreement with the owner).

- **Indemnity Clauses:** Indemnity obligations seek to shift risk. The design professional may indemnify its client for claims that arise out of, or pertain to, the design professional's own negligence. Always tie any indemnity obligation to your (design professional's) independent negligent acts, errors, or omissions. Do not consent to indemnify the other party for their own negligence. Doing so presents potentially uncontrollable risks, and many states prohibit such indemnification.
- Where possible, do not agree to undertake the indemnitee's defense, but only agree to indemnify (for both defense costs and damages) — where the design professional's negligence has been established, and/or proven. Some states require one to specifically carve out the duty to defend. For example, one might state that the "[design professional] shall indemnify (but shall have no immediate duty to defend...)".
- **Insurance Requirements:** Make certain that you are aware of, and can satisfy, the contract's requirements concerning **Additional Insured** status, types of coverage, minimum limits, etc. It's usually a good idea to speak with your agent concerning the contract's insuring requirements, and whether your insurance program satisfies them.

IEEE consulting members, and those considering the opportunity to become self-employed (or even to undertake a single consulting project) can learn more about their exposure to risk and ways to mitigate exposures with contracts and insurance, in addition to prudent business practices. These resources can be found at <https://www.ieeeinsurance.com/ieee-plrm.html>. Information about the professional liability insurance and related policies, as well as the online application for coverage are at <https://www.ieeeinsurance.com/ieee-us-refresh/professional-coverage/professional-liability-insurance.html>. ■

Disclaimer: The information contained in this bulletin is for general guidance and educational purposes only, and does not constitute legal advice. Discussion of insurance policy language is descriptive only; every policy has different language, and it is subject to different terms and conditions. Please refer to your own policy for its specific language.



U.S. DEPARTMENT OF LABOR ANNOUNCES PROPOSED RULE ON CLASSIFICATION OF EMPLOYEES AND INDEPENDENT CONTRACTORS

The U.S. Department of Labor (DOL) recently published a [Notice of Proposed Rulemaking](#) to help employers and workers determine whether a worker is an employee or an independent contractor under the *Fair Labor Standards Act*. The proposed rule is likely to affect many U.S. IEEE members, who engage in consulting work as independent contractors.

Remember California AB5?

Regular readers of this newsletter may feel a sense of déjà vu, as this issue first raised its head in California three years ago with the [passage of Assembly Bill 5](#). To better understand the proposed federal rules, it may be helpful to review the impact that AB5 had on consultants, and compare that to the DOL proposal. AB5 attempted to update employment law in California to cover the increasing number of gig workers in the economy by redefining who is (and isn't) an employee. AB5 established the so-called "ABC" test, a set of three criteria to determine who is a legitimate independent contractor. The test criteria are:

1. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
2. The person performs work that is outside the usual course of the hiring entity's business.
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

All three of these criteria must be satisfied for the person to be classified as an independent contractor. One can imagine how criterion (b), in particular, could quickly turn an engineering consultant into a de facto employee (a software engineer contracting with a software company and an electrical engineer contracting with another engineering firm are obvious examples). Fortunately, the state labor code was amended after the passage of AB5 to provide

certain exemptions to the ABC test, in particular for licensed engineers and certain bona fide business-to-business contracting relationships. Under those exemptions, the [multifactor Borello test](#) applies, instead.

What's Different in the Proposed Federal Rules?

The DOL proposal specifically does *not* employ the California ABC test. Instead, it requires a test against six enumerated "economic reality" factors that include such criteria as:

- The opportunity for the person to incur profits (or losses) through managerial skill (or lack thereof)
- Whether the person makes investments of a capital or entrepreneurial nature
- The degree of permanence of the relationship between the person and the contractor
- The degree of control the person has over the performance of the contracted work
- Whether or not the person's work is an integral part of the contractor's business
- The degree to which specialized skills and independent judgment are used to perform the work

Unlike the California rule, there is no requirement that all six factors are satisfied. Instead, classification requires a "totality-of-the-circumstances" analysis that considers all factors that may be relevant and does not assign a predetermined weight to any of the factors.

For further details on the proposal, as well as IEEE-USA's position on the new rule, refer to the [archived IEEE-USA livestream webinar](#) on the topic, presented by IEEE-USA's Director of Government Relations Russell Harrison.

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