

FREELANCER OR EMPLOYEE?

WHAT ARE THE TAX CONSEQUENCES?

NIRALI PATEL, ESQ.

GREATER BOSTON LEGAL SERVICES

FREELANCER V. EMPLOYEE

FREE-LANCER

A person who pursues a profession without long-term commitment to any one employer.

- Developer
- Translator
- Videographer
- Writer
- Accountant

EMPLOYEE

A person working for another person or business for wages or salary.

- Janitorial Services
- Food Services
- Day Care
- Hospitality Industry
- Delivery Drivers

WHAT IS MISCLASSIFICATION

Employee misclassification is the practice of labeling workers as independent contractors rather than employees.

CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Rents	OMB No. 1545-0115 2021 Form 1099-MISC	Miscellaneous Information
		\$		
		2 Royalties		
PAYER'S TIN		3 Other income	4 Federal income tax withheld	Copy B For Recipient
		\$	\$	
RECIPIENT'S TIN		5 Fishing boat proceeds	6 Medical and health care payments	This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS
RECIPIENT'S name		7 Payer made direct sales totaling \$5,000 or more of consumer products to recipient for resale <input type="checkbox"/>	8 Substitute payments in lieu of dividends or interest	
Street address (including apt. no.)		9 Crop insurance proceeds	10 Gross proceeds paid to an attorney	
City or town, state or province, country, and ZIP or foreign postal code		11 Fish purchased for resale	12 Section 409A deferrals	
		\$	\$	
		\$	\$	

7171 VOID CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. Z Builders 123 Maple Avenue Oaktown, AL 00000 555-555-1212		OMB No. 1545-0116 2020 Form 1099-NEC	Nonemployee Compensation	
1 Nonemployee compensation \$ 5500.00		Copy A For Internal Revenue Service Center		
PAYER'S TIN 10-9999999	RECIPIENT'S TIN 123-00-6769	File with Form 1096.		
RECIPIENT'S name Ronald Green dba/ Y Drywall		For Privacy Act and Paperwork Reduction Act Notice, see the 2020 General Instructions for Certain Information Returns.		
Street address (including apt. no.) 456 Flower Lane		4 Federal income tax withheld \$		
City or town, state or province, country, and ZIP or foreign postal code Oaktown, AL 00000				
FATCA filing requirement <input type="checkbox"/>				
Account number (see instructions)	2nd TIN not <input type="checkbox"/>	5 State tax withheld \$	6 State/Payer's state no.	7 State income \$

WHY MISCLASSIFY?

No overtime pay

No employer provided health insurance

No access to unemployment benefits or workers compensation
















Employer avoids paying Medicare and Social Security tax putting the burden on the worker.

Worker pays income tax AND self-employment tax.

- Independent contractor pays 15.3% in FICA
- Employee pays 7.6% in FICA

TAKEAWAY: When employers misclassify, the worker pays more money out of pocket AND loses out on benefits.

EMPLOYEE V. INDEPENDENT CONTRACTOR

	EMPLOYEE	OR	INDEPENDENT CONTRACTOR
	Working for someone else's business		Running their own business
	Paid hourly, salary, or by piece rate		Paid upon completion of project
	Uses employer's materials, tools and equipment		Provides own materials, tools and equipment
	Typically works for one employer		Works with multiple clients
	Continuing relationship with the employer		Temporary relationship until project completed
	Employer decides when and how the work will be performed		Decides when and how they will perform the work
	Employer assigns the work to be performed		Decides what work they will do

CONSEQUENCES FOR MISCLASSIFYING

- **Tax** – penalties for failure to withhold Social Security and Medicare payments (FICA).
- **Wage Law Violation** - failure to pay overtime and minimum wages
- **Unemployment Insurance** – penalties for failure to pay appropriate amount of money to the state unemployment insurance funds.
- **Workers' compensation** - penalties for violation of state worker's compensation.

IRS RULES FOR MISCLASSIFICATION

Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

IDENTIFYING MISCLASSIFICATION

Ask these questions:

1. Did you have your own business?
2. Did you view yourself as an employee or did you work for yourself?
3. Did you have a boss?
4. Did you have to clock in and clock out of work?
5. Did someone have control over how you did the work?
6. Did you have any business expenses?

ADVISING CLIENTS

If you suspect a worker has been misclassified, then you may refer them to GBLS LITC to correct the misclassification.

We will help the worker with the following:

- Review the misclassification under Revenue Ruling 87-41
- Consider the tax refund statute of limitation with the worker – 3 years from when the payment is made
- File form SS-8. The SS-8 unit helps the worker make a determination for whether they are an employee or an independent contractor. This is not anonymous and the employer will know the worker filed this. Anti-retaliation protection is possible.
- File corrected tax return so the worker only pays what they owe.
- Advise on how tax misclassification intersects with overtime, minimum wage, collective bargaining, and unemployment protection.



MISCLASSIFICATION

Did your employer pay you as a contractor?

If you were paid as a contractor but were really an employee, you were "misclassified." You may have paid TOO MUCH in taxes.

EMPLOYEE OR CONTRACTOR?

DID YOU WORK AS AN EMPLOYEE?

If you were paid as an employee, you got a W-2 to report your wages. Your employer took 7.6% of your pay for Social Security and Medicare taxes.

DID YOU WORK AS AN INDEPENDENT CONTRACTOR?

If so, you got a 1099 to report your wages. You had to pay the IRS 15.3% of your pay for Social Security and Medicare taxes. (That's 2 times more than employees!)

HOW DO I KNOW IF I WAS PAID AS A CONTRACTOR?

"No" answers mean you were paid as a contractor?		
Did your employer have to...	yes	no
pay you overtime?		
provide healthcare benefits?		
deduct taxes from your pay?		
Were you eligible for...		
Workers compensation?		
Unemployment benefits?		

IF I WAS PAID AS A CONTRACTOR, COULD I STILL BE AN EMPLOYEE?

Yes. Many employers classify employees as contractors. Doing so makes it easier and cheaper for the employers.

HOW DO I KNOW IF I AM REALLY AN EMPLOYEE?

You are probably an employee if:

- **Control.** Your employer controls how and where you do your work.
- **Skills.** You were trained on the job.
- **Other jobs.** Your employer does not want you to have other jobs while you do this job.
- **Period of work.** Your job does not have a *specific* end date.

Important! Even if your contract with the employer says you are an independent contractor, you may still be an employee.

"Misclassified" workers end up paying 15.3% of their wages in Social Security and Medicare tax, instead of the 7.6% regular employees are supposed to pay.

Questions

Contractors pay more taxes than employees. But many contractors are really employees.

Our Low-Income Taxpayer Clinic can help you decide if you should be an employee. We can also help you take your case to the IRS.

Greater Boston Legal Services
Low-Income Taxpayer Clinic
197 Friend Street
Boston, MA 02114
(617) 603-1718

ARE YOU AN INDEPENDENT CONTRACTOR

AS AN INDEPENDENT CONTRACTOR

KEEP RECORDS

Collect and keep records and receipts during the year. Record keeping can help you track your income, deduct expenses, and complete your tax return

Expenses – save receipts of your expenses. You can lower the amount of tax you owe by deducting certain expenses. (Publication 535, Publication 583, Publication 527). Some examples include:

- Car Expense: standard mileage rate or actual car expense
 - standard mileage rate is 57.5 cents per mile
 - actual car expense includes gas, oil, repairs, lease payments, insurance, garage rent, parking fees etc.
- Meals for Travel: You can deduct the cost of meals if it is necessary for you to stop for substantial sleep or rest to properly perform your duties while traveling away from business
- Travel: you can deduct when you travel away from home for business purposes. You can deduct ordinary and necessary expenses you have when you travel away from home and business.
- Tools: tools used in your business are deductible expenses if the tools have a life expectancy of less than 1 year or they cost \$200 or less per item or invoice.

PAY ESTIMATED TAXES

If you earn money as an independent contractor, you may have to pay quarterly estimated taxes. You can avoid a penalty by paying enough tax on time.

When to pay — Estimated tax payments are due four times a year:

- April 15 for payment period January 1–March 31
- June 15 for payment period April 1–May 31
- September 15 for payment period June 1–August 31
- January 15 for payment period September 1–December 31

GET READY TO FILE

- The businesses you work with may send forms to the IRS to report payments made to you. If they do, you should receive copies of the forms by January 31.
- Include all income — Use your sales receipts to report any payments not reported to you on a 1099 or W-2.
- Subtract your expenses — You can lower the amount of tax you owe by deducting certain expenses.

FILE YOUR TAX RETURN

To file your tax return as an independent contractor (self-employed), use the records you gathered and fill out these forms:

- Form 1040, U.S. Individual Income Tax Return or Form 1040-SR, U.S. Tax Return for Seniors
- Schedule SE (Form 1040), Self-Employment Tax
- Schedule C (Form 1040), Profit or Loss from Business (Sole Proprietorship)

ADDITIONAL HELP

<https://www.irs.gov/businesses/gig-economy-tax-center>
 Form 1040-ES, Estimated Taxes for Individuals
 Form 1040-ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals
 Publication 463, Travel, Entertainment, Gift, and Car Expenses
 Publication 535, Business Expenses
 Publication 587, Business Use of Your Home
 Qualified Business Income Deduction
 Volunteer Income Tax Assistance

This flyer does not constitute legal advice nor a client relationship. This flyer is for informational purposes only.

ARE YOU AN INDEPENDENT CONTRACTOR

AS AN INDEPENDENT CONTRACTOR

WHAT IS AN INDEPENDENT CONTRACTOR

- An independent contractor is a self-employed individual doing temporary, and flexible jobs providing services or goods.
- An independent contractor has control over their business, the method for which the work is accomplished, and the choosing of clients.

INDEPENDENT CONTRACTOR OR EMPLOYEE

Independent Contractor

- Does the same work for multiple people
- Has own tools and equipment
- Can hire, supervise, and pay assistants
- Can make a profit or suffer a loss
- Set own schedule and hours
- Has a business license

Employee

- Works for single employer
- Is furnished with tools or materials necessary
- Can quit at any time
- Must comply with instructions on when, where, and how to work
- Is trained by employer

EXAMPLES OF INDEPENDENT CONTRACTOR JOBS*

Freelancing Work

- Writer
- Graphic Designer
- Web Designer
- Social Media Manager
- Marketer

Driver/Delivery

- Lyft
- Uber
- DoorDash
- TaskRabbit
- GrubHub

- Provide creative or professional services
- Sell goods online
- Rent out property or part of it

*Note: This list does not include all types of gig work.

TAX CONSEQUENCES

- You must file a tax return if you have net earning from self-employment of \$599 or more, even if it's a side job, part-time or temporary.
- A gig worker pays 15.3% of their wages in social security and Medicare tax, instead of the 7.6% regular employees are suppose to pay.
- **If you think you have been misclassified/should be classified as an employee, call our number below.**

WHAT TO DO

Here is how to manage taxes for independent contractors (self-employed):

1. Keep Records
2. Pay Estimated Taxes
3. Get Ready To File
4. File Your Tax Return



FLIP FOR MORE INFORMATION

Greater Boston Legal Services LITC
 197 Friend St,
 Boston, MA 02114
 (617) 603-1718

This flyer does not constitute legal advice nor a client relationship. This flyer is for informational purposes only. Please call if you have questions or would like to apply for services.

Questions?

Name: Nirali Patel

Number: 617-603-1718

Email: niralipatel@gbls.org