

**From the desk of
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Independent Contractor Filing Changes

The due date for filing independent contractor form 1099 with the Internal Revenue Service for Non-Employee Compensation (Box 7) along with W-2s are due to the IRS by January 31, 2019.

If you have paid anyone other than a corporation you are required to file a Form 1099 for payment for their services if it amounts to more than \$600.

Worker Classification

The classification of a worker as an independent contractor rather than a worker can be exceedingly complex, and depends on the facts and circumstances of each case.

The determination is based on whether the person for whom the services are performed has the right to control how the worker performs the services.

An employee is technically controlled by the employer, managing what their work, how they do it, and when.

For all those who work within your office or premises, that is an employee by government standards, as are many who now work remotely.

An independent contractor may be told what project is needed and when the work is due, but they are in control of the way they go about the work.

An independent contractor handles their own licensing, and permits, and insurance. Lacking any of these items makes the relationship that of employer/employee.

The IRS and other government agencies, and insurance companies are aware that employers who mislabel their workers as employees escape the obligation of paying minimum wages, overtime, payroll taxes, worker's compensation, unemployment, Social Security, health benefits, paid leave, and retirement benefits.

There are serious consequences to misclassification of a worker as an independent contractor.

If the worker is determined by the IRS to be an employee the business is liable for the taxes it neglected to withhold in addition to the employee's share plus interest and penalties, in addition to pension costs, and insurances.

The IRS utilizes a 20-factor test which can be found on our website.

The tests are based on common law principles which it has condensed into a three-part test focusing on behavioral control, financial control, and the relationship of the parties.

States, especially California follow the federal tests and have added their own more restrictive rules.

The California Supreme Court adopted a new three-part test to make the determination under California's wage orders which regulate wages, hours and working conditions.

This new "ABC" test requires a company to establish three factors to classify a worker as an independent contractor:

A. The worker is free from the control and direction of the hirer in connection with the performance of the work both under the contract for the performance of such work and in fact;

B. The worker performs work that is outside the usual course of the hiring entity's business; and,

C. The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

Failing the above ABC Test, a worker is considered under California law to be an employee.

For those who are unsure whether certain workers are employees or independent contractors, the IRS is happy to help.

The request to have the IRS make the determination can be made by a firm or a worker, and is submitted on Form SS-8, "Determination of Worker Status for Purposes of Federal Employment Taxes and income Tax Withholding."

In recent audits the IRS seems to have added a new audit procedure in that W9's are requested for presentation.

The IRS has been moving towards disallowing tax deductions for any payments made unless both the required 1099 is issued, and a timely filed W9 is on hand by the business.

We here at Muffoletto & Company believe that the more informed you are in regards to the rules and regulations that affect you the more we can be of service.

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