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I can *Hammer* out any Problem!

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John’s *Free* Position Papers are *Educational, Entertaining, and Empowering* that provide definitions, procedures, website links for cross reference, and a Table of Contents for easy review.

THE 1099 INDEPENDENT CONTRACTOR REQUIREMENTS

TABLE OF CONTENTS

<u>Definitions</u>	2
<u>Independent Contractor or Jobber (Federal Form 1099-MISC)</u>	2
<u>Self-Employment Tax</u>	3
<u>Federal and State Individual Income Tax Withholding</u>	3
<u>Business Expense Deductions</u>	4
<u>Unemployment Tax</u>	4
<u>Workers' Compensation</u>	4
<u>Employee or Independent Contractor?</u>	5
<u>IRS 20 Factors for Employee Classification</u> <i>Revenue Ruling 87-41: The Twenty Factors</i>	6
<u>Virginia Tax Facts</u>	7

The 1099 Independent Contractor Requirements

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Definitions

Independent Contractor – The IRS defines it as, People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax.

If you are an independent contractor, you are self-employed. To find out what your tax obligations are, visit the Self-Employed Tax Center. www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center

You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor and your earnings are generally not subject to Self-Employment Tax.

However, your earnings as an employee may be subject to FICA (Social Security tax and Medicare) and income tax withholding. www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined

Employee (Common-Law Employee) - Under common-law rules, anyone who performs services for you is your employee ***if you can control what will be done and how it will be done***. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

www.irs.gov/businesses/small-businesses-self-employed/employee-common-law-employee

Statutory Employees - If workers are independent contractors under the common law rules, such workers may nevertheless be treated as employees by statute (statutory employees) for certain employment tax purposes if they fall within any one of the four categories and meet the three conditions described under ***Social Security and Medicare taxes***

www.irs.gov/businesses/small-businesses-self-employed/statutory-employees

Statutory Nonemployees - There are *three categories of statutory nonemployees*: direct sellers, licensed real estate agents and certain companion sitters. Direct sellers and licensed real estate agents are treated as self-employed for all Federal tax purposes, including income and employment taxes, if:

Substantially all payments for their services as direct sellers or real estate agents are directly related to sales or other output, rather than to the number of hours worked, and

Their services are performed under a written contract providing that they will not be treated as employees for Federal tax purposes.

Companion sitters who are not employees of a companion sitting placement service are generally treated as self-employed for all federal tax purposes

www.irs.gov/businesses/small-businesses-self-employed/statutory-nonemployees

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Independent Contractor or Jobber (Federal Form 1099-MISC)

Generally, when companies place employees strictly on commission they do not pay for training, sick leave, or other down time.

As a 1099 Employee, most likely, the company will consider you an “Independent Contractor” or a “Jobber,” then at the end of the year you will receive a statement of income listed on a Federal Form 1099-MISC.

As an “Independent Contractor” or a “Jobber,” the company will not take out or withhold any deductions for Federal or State Individual Income Tax.

When someone works for a company as a “Full or Part-time Employee,” then at the end of the year, they would receive a statement of income, with the amount of Federal and State Individual Income Tax Withheld listed on a Federal Form W-2.

Self-Employment Tax

When someone works for a company as a Full or Part-time Employee,” the company pays the IRS Social Security Tax and Medicare Tax totaling 7.65% of the employee’s income and the employee pays an additional Social Security Tax and Medicare Tax totaling another 7.65% of the employee’s income.

When an “Independent Contractor” or “Jobber” works for a company the “Independent Contractor” or “Jobber” pays both parts of the Social Security Tax and Medicare Tax totaling 15.3% (7.65% x 2) of the employee’s income.

Therefore, it will cost the “Independent Contractor” or “Jobber” an extra 7.65% out of their pocket to take the position and they must register with the IRS.

The IRS calls this “Self-Employment Tax.”

See www.JohnGoldhamer.com/JobTools/Job-Offer-Comparison-Worksheet.pdf

Federal and State Individual Income Tax Withholding

Since the company will not be withholding Federal and State Individual Income Tax, an “Independent Contractor” or “Jobber” must register and pay the IRS *Quarterly Estimated Individual Income Tax*. www.irs.gov/businesses/small-businesses-self-employed/estimated-taxes.

In most states, the “Independent Contractor” or a “Jobber” must also register and pay with the state Department of Revenue *Quarterly Estimated Individual Income Tax*. In Virginia, the “Jobber” must register and pay the Virginia Department of Taxation. <https://www.tax.virginia.gov/individual-estimated-tax-payments>

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Business Expense Deductions

Generally, since an “Independent Contractor” or a “Jobber” are not businesses , they are not able to deduct expenses; unless on their Federal 1040 Individual Income Tax Return they file Schedule A., Itemized Deductions and list *Job Expenses under Miscellaneous Deductions*.

Unfortunately, the deduction is *Limited to Amounts Over 2% Of “Adjusted Gross Income.”*

(If you have \$50,000 of “Adjusted Gross Income” then only amounts over \$1,000 are deductible)

See www.JohnGoldhamer.com/TaxWorkshops.html

If an “Independent Contractor” or a “Jobber” sets up a business such as a Sole Proprietor (Federal Schedule C), then they might be allowed business expense deductions.

Unemployment Tax

In most states, including Virginia, an “Independent Contractor” or a “Jobber” does not pay Unemployment Tax and they are *not* able to receive Unemployment Benefits.

Most organization employers are liable if they have one or more employees who work for any portion of a day in twenty different weeks in a calendar year, or if their total gross payroll for any calendar quarter is \$1,500 or more. §60.2-210. www.vec.virginia.gov/employers/i-have-employees-where-do-i-start

Workers' Compensation

In most states, including Virginia, an “Independent Contractor” or a “Jobber” does not pay Workers' Compensation and they *generally are not* able to receive Workers' Compensation Benefits.

Since 1902, a Worker's Compensation Law has been administered in the United States.

Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

en.wikipedia.org/wiki/Workers%27_compensation

In Virginia, Workers' Compensation claims are administered by the Virginia Workers' Compensation Commission (VWC). An employer may insure for workers' compensation through a commercial insurer, self-insurance, a group self-insurance association or through a professional employer organization. Commercial insurance is not available through the Commission. It is available through an insurance agent or carrier. <http://workcomp.virginia.gov>

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Workers' Compensation (Continued)

As a *general rule*, businesses with more than two employees are required to *carry workers' compensation coverage*. An employee is viewed broadly under workers' compensation law and includes part-time, seasonal and temporary workers, minors, trainees, immigrants and working family members.

www.vwc.state.va.us/content/employers

When counting workers be sure to include Family members, minors, aliens and part-time workers and Corporate Officers, *unless* Virginia Workers' Compensation, Form 16A "Officer / Manager Rejection of Coverage" is filed with the insurer and the Virginia Workers' Compensation Commission.

www.vec.virginia.gov/vecportal/employer/eacconf/10122011/10122011MinimizingWorkersCompensationCosts.ppt

Employers should also be aware, designating a worker as an Independent Contractor" *does not necessarily mean they are not an employee*. Workers' compensation looks to whether the business exerts control over the manner and means of how the work is performed.

In the event of a claim, the facts of the work circumstances will determine if the individual is covered for workers' compensation, regardless of payment on a Federal Form 1099 designation.

www.vwc.state.va.us/content/special-notice-new-penalty-uninsured-employers

Employee or Independent Contractor?

Sometimes an employer will classify workers as contractors instead of employees. In these cases, contract workers are responsible for paying their own payroll taxes, including federal and state income taxes and both the employer and employee portion of Social Security taxes.

In most cases, *contractors are responsible for providing their own Workers Compensation Insurance* and are *not eligible for Unemployment Insurance* if their services are no longer needed.

Generally, a worker who performs services for an employer is an employee if the employer can control both what will be done and how it will be done. The key factor is that the employer has the right to control the details of how the services are performed, even if the employee has substantial freedom of action.

By contrast, an independent contractor performs services required by an employer but is not subject to the employer's control about how the services are performed.

<http://www.vec.virginia.gov/employee-or-independent-contractor>

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IRS 20 Factors for Employee Classification

Revenue Ruling 87-41: The Twenty Factors

To help determine whether a worker is an employee [IRS identified 20 factors](#) that may indicate whether the employer can exercise enough control to establish an employer-employee relationship. Not all the factors must be present to find an employee/employment relationship, but the factors are guides to assess the likelihood as to whether an individual is an employee or an independent contractor. The 20 factors and Virginia's exemptions to employee classification can be found at www.vec.virginia.gov/irs-20-factors-and-exemptions

(1) *Instructions.* An employee must comply with instructions about when, where and how to work. The control factor is present if the employer has the right to require compliance with the instructions.

(2) *Training.* An employee receives on-going training from, or at the direction of, the employer. Independent contractors use their own methods and receive no training from the purchasers of their services.

(3) *Integration.* An employee's services are integrated into the business operations because the services are important to the business. This shows that the worker is subject to direction and control of the employer.

(4) *Services rendered personally.* If the services must be rendered personally, presumably the employer is interested in the methods used to accomplish the work as well as the end results. An employee often does not have the ability to assign their work to other employees, an independent contractor may assign the work to others.

(5) *Hiring, supervising and paying assistants.* If an employer hires, supervises and pays assistants, the worker is generally categorized as an employee. An independent contractor hires, supervises and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.

(6) *Continuing relationship.* A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. The IRS has found that a continuing relationship may exist where work is performed at frequently recurring intervals, even if the intervals are irregular.

(7) *Set hours of work.* A worker who has set hours of work established by an employer is generally an employee. An independent contractor sets his/her own schedule.

(8) *Full time required.* An employee normally works full time for an employer. An independent contractor is free to work when and for whom he or she chooses.

(9) *Work done on premises.* Work performed on the premises of the employer for whom the services are performed suggests employer control, and therefore, the worker may be an employee. Independent Contractor may perform the work wherever they desire as long as the contract requirements are performed.

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IRS 20 Factors for Employee Classification, Revenue Ruling 87-41: The Twenty Factors (Continued)

(10) *Order or sequence set.* A worker who must perform services in the order or sequence set by an employer is generally an employee. Independent Contractor performs the work in whatever order or sequence they may desire.

(11) *Oral or written reports.* A requirement that the worker submit regular or written reports to the employer indicates a degree of control by the employer.

(12) *Payments by hour, week or month.* Payments by the hour, week or month generally point to an employer-employee relationship.

(13) *Payment of expenses.* If the employer ordinarily pays the worker's business and/or travel expenses, the worker is ordinarily an employee.

(14) *Furnishing of tools and materials.* If the employer furnishes significant tools, materials and other equipment by an employer, the worker is generally an employee.

(15) *Significant investment.* If a worker has a significant investment in the facilities where the worker performs services, the worker may be an independent contractor.

(16) *Profit or loss.* If the worker can make a profit or suffer a loss, the worker may be an independent contractor. Employees are typically paid for their time and labor and have no liability for business expenses.

(17) *Working for more than one firm at a time.* If a worker performs services for a multiple of unrelated firms at the same time, the worker may be an independent contractor.

(18) *Making services available to the general public.* If a worker makes his or her services available to the general public on a regular and consistent basis, the worker may be an independent contractor.

(19) *Right to discharge.* The employer's right to discharge a worker is a factor indicating that the worker is an employee.

(20) *Right to terminate.* If the worker can quit work at any time without incurring liability, the worker is generally an employee.

Virginia Tax Facts

The Virginia Department of Taxation (the Department) www.tax.virginia.gov administers most state taxes, including but not limited to state income taxes, state withholding tax, sales and use taxes, and miscellaneous excise taxes.

Local taxes in Virginia, including real estate taxes, tangible personal property taxes and business license taxes, are administered separately by the state's cities, counties and towns.

<http://www.manassascity.org/DocumentCenter/Home/View/4315>