

HR insights

W-2 and 1099 Forms

As an employer, properly administering and submitting tax forms are among the most important parts of the job, but can also be quite complex to navigate. The employer is responsible for keeping accurate information throughout the year, as well as submitting the proper forms to their employees and the Internal Revenue Service (IRS). But many employers struggle with the question of which form to use – the W-2 or 1099? The distinction is a significant one, and one that is important for employers to get right.

Employee or Independent Contractor

The deciding factor in choosing the correct form is whether the individual in question is an employee or an independent contractor (employees get W-2 forms, while independent contractors receive 1099s). That distinction is not always clear, but it is essential for employers to classify workers appropriately. The IRS has created three criteria to help employers make the proper distinction:

1. *Behavioral Control.* Does the company train and control what the worker does, and how the worker goes about the job? Does the employer specify the hours of work, tools to be used and specific tasks to be performed? If so, the worker likely is an employee of a company; if not, the worker could be an independent contractor.
2. *Financial Control.* What amount of financial control does the company have over the worker? If the worker

is paid a salary, restricted from working for others and does not participate in company profits or losses, then he or she is probably an employee.

3. *Type of Relationship.* The presence of a written contract may indicate an independent contractor. On the other hand, if the worker is eligible for employee benefits, then he or she is an employee. Other aspects to consider include whether the

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relationship will continue and whether the worker participates in core work of the company (for example, a maintenance worker in a bank would not be doing “core” company work and may qualify as an independent contractor).

The type of relationship that exists can be hard to determine, and these factors can conflict with each other at times. It is best to evaluate the entire relationship and situation, and be sure to document the factors used in making the decision (in case of an IRS audit). If the employer is

still unable to decide which designation is more appropriate, it can file a Form SS-8 to request a determination from the IRS.

Form W-2

A W-2 form reports total income (wages, tips and other compensation), Social Security and Medicare income, and how much has been withheld from the employee’s pay for federal, state and local taxes. Employers are required to submit Form W-2 for each employee who had income, Social Security or Medicare

taxes withheld in that calendar year. Employers are required to provide a copy of this form to all employees by Jan. 31 of the following year. They are also required to submit all W-2 forms to the Social Security Administration (SSA), along with a W-3 form highlighting the total taxable wages and salaries for all employees, by Feb. 28.

These forms can be found on the IRS Website. To access the W-2 form, visit www.irs.gov/pub/irs-pdf/fw2.pdf. For Form W-3, visit www.irs.gov/pub/irs-pdf/fw3.pdf.



Form 1099-MISC

Companies do not have to withhold or pay any taxes on payments made to independent contractors, nor do they deduct any Social Security or Medicare taxes from their payments. Therefore, the company must instead file a 1099-MISC form for any independent contractor that worked for them in the past year and to whom they paid \$600 or more.

The independent contractors' copy of the form must be provided to them no later than Jan. 31. In addition, the company is required to send all copies of 1099-MISC forms to the IRS by Feb. 28, along with a Form 1096, which compiles all 1099 information.

The 1099-MISC form can be found online at www.irs.gov/pub/irs-pdf/f1099misc.pdf, and the 1096 form can be accessed at www.irs.gov/pub/irs-pdf/f1096.pdf.