

Independent Contractor OR Employee?



TexasMutual®
WORKERS' COMPENSATION INSURANCE
WORK SAFE, TEXAS™

Agenda

- Texas Labor Code
- Independent contractors vs. Employees
- Contract labor and 1099s
- DWC forms

Independent Contractors



What is an independent contractor? Where can I find the official definition?

Texas Labor Code

Section 406.141

"Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

- (A) Is paid by the job and not by the hour or some other time-measured basis;
- (B) Is free to hire as many helpers as desired and may determine the pay of each helper; **and**
- (C) Is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors.

Texas Labor Code

Section 406.121

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

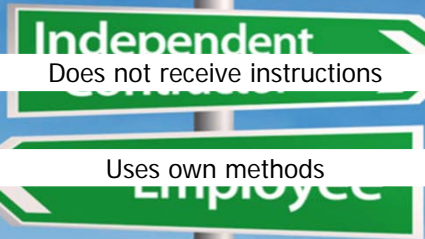
- (A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;
- (B) is free to determine the manner in which the work or service is performed, including the hours of labor or of method of payment to any employee;
- (C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; **and**
- (D) possesses the skills required for the specific work or service.

Independent Contractors



Can you help me determine if a worker is an employee or an independent contractor?

Independent Contractors




- Does not receive instructions
- Uses own methods
- Services not always performed personally

Independent Contractors



- Control of their own assistants
- No continuous relationship
- Sets own hours of work

Independent Contractors



- No progress reports required
- Paid by the job
- Supplies own tools

Independent Contractors




Significant investment

Realize profit or loss

Works for multiple companies

Independent Contractors



Not exclusive to one firm

Right to choose location

Sequence of work

Independent Contractors



Services available to the public

Cannot be terminated "at will"

Liability for non-completion

Independent Contractor Questionnaire

How is/are the independent contractor(s) paid?

By the Job By Contract Other
 By the Hour By Piece

Is/are the independent contractor able to hire others to perform work?

If yes, who pays the others hired?

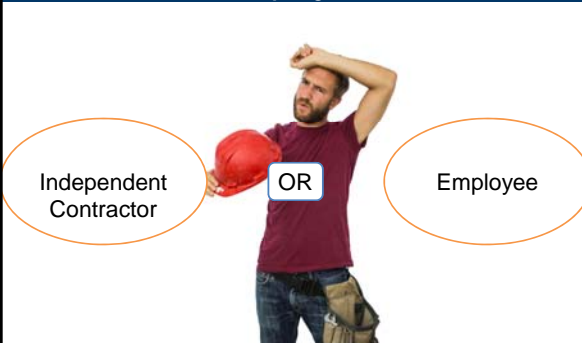
Do/does the independent contractor(s) work for anyone else?

Commercial Contractors

All other contractors other than residential & small construction contractors

1. Do/does the independent contractor(s) have their own employees?
2. Who determines how the work is performed?
3. Who provides the tools, supplies, or materials?
4. What skill(s) do/does the independent contractor(s) possess?

Independent Contractor or Employee



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Contract Labor




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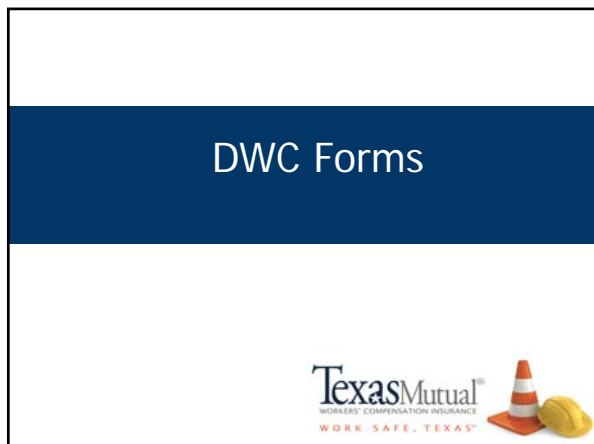
Contract Labor

- Subcontractors **not** determined to be bona-fide independent contractors by establishing an employer-employee relationship between the hiring contractor and the sub-contractor:
 - Will be subject to premium charges on the hiring contractor's workers' compensation policy
 - If a subcontractor does not hold himself out to the public as performing an independent business service, and regularly devotes all or most of his time to a particular employer, he could probably be considered contract labor.

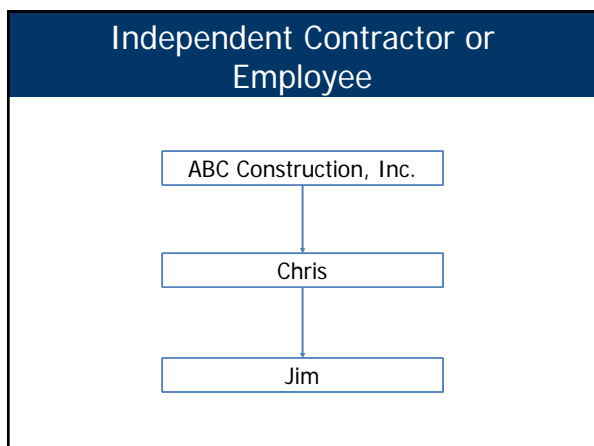
1099s



Not all 1099 recipients are independent contractors







Recap

- Texas Labor Code
- Independent contractors vs. Employees
- Contract labor and 1099s
- DWC forms

Questions?



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References

Texas Workforce Commission

- <http://www.twc.state.tx.us/>

Texas Department of Insurance

- <http://www.tdi.texas.gov>

Texas Constitution and Statutes

- <http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.406.htm>

Thank you!