



## L&G PAYROLL CENTER

STATE OF CALIFORNIA  
LABOR AND WORKFORCE DEVELOPMENT AGENCY  
EMPLOYMENT DEVELOPMENT DEPARTMENT  
DE 573M Rev. 3 (7-11)

### **Subcontractor misconceptions.**

***“If I issue an Internal Revenue Service (IRS) Form 1099-MISC, then the worker is an independent contractor.”***

**NOT TRUE.** An IRS Form 1099-MISC is simply a method the government uses to track and report certain types of non employment income. When you provide an IRS Form 1099-MISC to a worker for payment of services, **it does not automatically make the worker an independent contractor.**

***“If I pay a worker less than \$600 in a year, then the worker is not subject to California payroll taxes.”***

**NOT TRUE.** The amount paid to a worker is not, by itself, a factor in determining whether a worker is an employee or independent contractor. The amount paid to a worker may determine if you should issue an IRS Form 1099-MISC. For information on the federal requirements, access the IRS Web site at [www.irs.gov](http://www.irs.gov) or contact the IRS at (800) 829-1040.

***“My worker and I have signed a written contract that makes my worker an independent contractor.”***

**NOT TRUE.** A written contract or agreement does not necessarily depict the actual relationship. The **actual practices** of the parties in a relationship are more important than the wording of an agreement in determining whether a worker is an employee or independent contractor.

***“The part-time, temporary, probationary, and substitute workers I employ are day laborers or casual laborers, not employees.”***

**NOT TRUE.** An employee may perform services on a less than full-time permanent basis. The law does not exclude services from employment that are commonly referred to as day labor, part-time help, casual labor, temporary help, probationary, or outside labor. For more information, refer to the Information Sheet: Casual Labor (DE 231K).

***“If a family member works for me, he/she is not an employee.”***

**NOT TRUE.** Family members working for your business are employees and subject to California payroll taxes unless certain conditions are met. For more information, refer to the Information Sheet: Family Employment (DE 231FAM).

***“My competitors treat their workers as independent contractors; therefore, it is okay for me to treat my workers as independent contractors.”***

**NOT TRUE.** The law defines employment relationships, not you or the actions of your competitors. If you misclassify your workers as independent contractors, EDD may assess you for the unpaid payroll taxes for any unreported employees.

***“My worker performs similar work for other businesses, so the worker is an independent contractor.”***

**NOT TRUE.** Performing similar work for other businesses is not, by itself, a determining factor. The relationship the worker may have with the other businesses is not a controlling factor when determining the worker’s status as an employee or independent contractor with your business.

The working relationship with each business is looked at separately.

***“My worker has a city business license and business card, so the worker is an independent contractor.”***

**NOT TRUE.** A city business license and business card, by themselves, do not make a worker an independent contractor. All of the common law factors need to be reviewed and weighed with respect to the specific circumstances of the services provided by each worker.

***“I pay my workers solely by commission; therefore, they are independent contractors.”***

**NOT TRUE.** The method of payment is not, by itself, a determining factor. All of the common law factors need to be considered and weighed to determine whether a worker is an employee. If the worker is an employee, then all remuneration for services (salary, hourly pay, piece rate, commissions, bonuses, stock options, vehicle, etc.) is wages. For more information, refer to the Information Sheet: Wages (DE 231A).