

Ask 1099

Q: *Recently, I was close to finishing a project when my client pulled the plug on me. He just did a 180 and fired me. This came as a huge surprise — until this point, my client seemed happy with my work.*

Suddenly, I got a termination email. It horrified me.

My contract didn't say anything about cancellations. The thing is: Because I was so close to finishing, I'm worried that he'll hire someone else to pick up where I left off, that he'll use what I had created as a starting point. We're talking about 40 hours of work. Is this worth pursuing legally?

— Name withheld

A: You may have legal recourse, and it sounds like it may be worth pursuing. When you enter into a contract with a client, you each make a legally binding promise: You promise to do the work called for in the contract, and the client promises to pay you. Unless the contract explicitly gives the client the right to cancel the project, he can't simply change his mind and fire you. This is particularly true after you've completed or nearly completed the work. The only exception would be if you materially breach the contract — for example, if you fail to meet a deadline or your work is unsatisfactory.

From what you've said, it appears that your client has breached your contract, which means you are legally entitled to sue him. Your damages would be the contract price or the reasonable value of the work you performed.

Check your contract carefully. See what it says about resolving disputes. Some contracts require that disputes be settled through arbitration. If that's the case, you can't sue the client in court. Instead, you two must have an arbitration hearing, which is like an informal trial. The arbitrator can be a lawyer, a retired judge, or anyone else you and your client agree on.

Got questions? Good, because we've got answers. We recruit specialists like tax master Jan Zobel and ace attorney Stephen Fishman to help solve America's most puzzling solo-business problems. Go to 1099.com/ask to ask legal, tax, tech, or other questions about your boss-free life.

If your contract does not require arbitration, you can go directly to court. Depending on how much you're owed, you may want to sue the client in small-claims court. See "Collect Yourself: How to Extract Money from Tight-Fisted Clients" on page 19 for information on how to win your case. (SF)

Q: *As an H1-B visa holder, can I legally be an independent professional?*

— Vikram Hardi
Atlanta, Ga.
Software consultant

A: The answer is no. An H1-B visa allows foreign professionals in "specialty occupations" — professors, scientists, or engineers, for example — to work in the United States for up to six years. The visa is employer-specific: The U.S. employer petitions the Immigration and Naturalization Service on the foreign worker's behalf, and H1-B visa holders can work only for that employer. An H1-B visa holder cannot start her own business, which includes becoming an IP.

If you want to work in the United States as an IP, you must find another way to enter the country. Here are two:

The only way to become a permanent legal resident of the United States is to get a green card. Green cards — which aren't green, by the way — go to people who are married or otherwise closely related to a U.S. citizen and to the lucky winners of a green-card lottery. They also go to people whose job skills are wanted by U.S. employers. (Green-carders can work at any job, for any

company, anywhere in the United States, and they can apply to become citizens after they've held the card for a certain length of time.) But be warned: This method isn't foolproof, and it can take a while.

You can enter the United States temporarily by getting a nonimmigrant visa — a simple stamp on your passport. Get yours at a U.S. embassy or consulate in another country. A nonimmigrant visa gives you the right to request entry into the United States. Other privileges depend on the type of visa but can include permission to work, study, or invest money while in the United States.

For more information about settling in the United States, pick up *U.S. Immigration Made Easy*, by Laurence A. Canter, Lawrence Center, Martha Siegel, and Richard A. Boswell (Nolo.com, 2000). (SF)

Q: *I'm an IP who also has a full-time job, and I commute 150 miles each day. Is there a way that I can deduct my travel time? Kinda bend the rules a bit? At 150 miles a day, the commute is a big ticket for me. My wife and I are DINKs and don't own a home, so we get reamed at tax time. How can I recoup some of this expense?*

— Anthony Ballo
www.Ecometry.org

A: You may be able to claim some of your mileage expense if you have a deductible home office and freelance on the same days you work as an employee. Do some IP work before you leave for or after you come back from your job, and you can deduct the mileage between your home office and your employer's office, or between your employer's office and your home office. If you freelance in the evening after work, for example, you can deduct the trip home. (You're still stuck with non-deductible miles going to work, though.)

Another possibility: If it's appropriate for your business, rent a post-office box near your home. A stop at the post office on your way to or from your job makes the whole trip deductible. This also works if you stop at an office-supply store or do some other IP business on your way to or from your job.

A third possibility: Maybe your employer will let you telecommute. Ask. If that's an option, why not stay home and save some cash? (JZ)

Q: *Not long ago, I took a permanent job and stopped freelancing. Last week, I got a Form 1099 in the mail from one of my former clients. I have both a DBA and a tax ID number, which I recently closed out. Because last year was the first time I did real freelancing and held a full-time job, I have a few questions.*

How do I file my taxes? Do I fill out a Schedule C, a Form 1040, or both? Some of the dot-coms I freelanced for went belly up and haven't sent me 1099s. What am I supposed to do? One of my clients wrote me checks with my name and my company's name on them, but noted only my social security number, not my tax ID number. Where should I file that income?

— Nick Cat
Dallas, Tex.

A: Your tax situation isn't as confusing as it seems. Assuming that you operated as a sole proprietor, you should report your freelance income on a Schedule C. Then attach the Schedule C to your Form 1040. Report your wages on line 7 of the Form 1040 and the net profit from your business (which you've calculated on your Schedule C) on line 12 of the Form 1040. Combine the two amounts, along with any other sources of income, and — voilà — there's your total income.

By now you should have received 1099s from most of the companies for which you did freelance work last year. (The forms are due to recipients by January 31.) You may not get them all

by that date; and you may not get them from everyone who should send you one. You're responsible for reporting all your income, 1099 or no. That's why you should keep your own records of IP income and not depend on the 1099s to tell you how much you've earned.

Schedule C asks for your tax ID (employer ID) number, if you have one. Because you've already listed your social security number on your Form 1040, it's easy for the IRS to connect the two numbers. Report all IP income on your Schedule C, and don't worry about whether it was reported under your social security number or your tax ID number. (JZ)

Q: *I recently started a limited-liability company, and now I want to make the transition from being an hourly employee to an IP. I currently have two employers, and both are agreeable to the new arrangement, but I can't figure out how to recalculate my pay from an hourly rate and have everything come out the same as it was before.*

I'm currently paid \$35 an hour for a 40-hour week. My employers pay their

share of my social security taxes, as well as disability and unemployment. Is there a formula that will let me calculate a new hourly rate that pays everything to me directly without shorting myself or my future clients?

— Ralph P. Mancuso
Jersey City, N.J.
Registered pharmacist

A: I can't give you an easy formula, but here are some factors in deciding on an equitable hourly rate:

As an employee, the government deducts 7.65 percent from your paycheck and puts it into your social security/Medicare account. Your employer contributes another 7.65 percent. As an IP, you're responsible for both the employee's and the employer's share. Your employer pays into unemployment insurance on your behalf and also covers you under a workers' compensation policy. As an IP operating as an LLC, you'll have to pay for this required coverage.

If your employer pays the premiums for your disability and/or health insurance, you'll have that expense too.

You need to figure out how many nonbillable hours — the time you spend doing marketing, paperwork, and other administrative tasks — will be involved in your work as an IP. You should factor those costs into your hourly fee.

Research the cost of all the items that your employers currently are paying. Be sure there's a real benefit to you in becoming an IP — you want more-flexible hours, for example. You may save some money by remaining an employee at one of your jobs and working as an IP at the other.

By the way, are you sure that you're an independent contractor and not an employee? It's not enough that you and your employers agree to your plan; you also need to make sure you won't run afoul of IRS rules (check out IRS Publication 15A). (JZ) **1099**



Stephen Fishman, a lawyer, has written numerous books, including *Working for Yourself* (Nolo.com, 2000) and *The Copyright Handbook* (Nolo.com, 2000).

Jan Zobel is a tax professional who has been working with IPs for more than 20 years. She's also the author of *Minding Her Own Business: The Self-Employed Woman's Guide to Taxes and Recordkeeping* (Adams Media, 2000).

