Options for UndocuWorking Presentation

Pros/cons of different income options for undocumented folks, legal implications, and more!
WHO WE ARE
NYSYLC.ORG
Agenda

1. Background of Work Authorization
2. Legal Implications of Working Without Work Authorization
3. Options for Working
4. Deep Dive into Independent Contracting
Background of Work Authorization

1. Employers **are required to verify** the identity and **work authorization of** individuals hired as **employees**

2. Employers **don't need to check the work authorization of independent contractors**, unpaid **volunteers**, and workers who provide **infrequent services in private homes**.
Legal Implications of Working Without Work Authorization

Remember!

1. It is not illegal to work without authorization. **It is not a crime.**

2. Ensuring that someone has authorization to work is the **employer's responsibility**, not the worker’s
Legal Implications of Working Without Work Authorization

**Immigration Impacts**

In general, working without a permit in itself won’t make an undocumented ineligible for immigration statuses in the future.

Visas/statuses that some undocumented people can apply for without leaving the US

Examples:

- Green card if you are an “immediate relative” of a U.S. citizen
- Specialized visas (U visa for crime victims; special immigrant juvenile visas for some youth)

Some people can apply for these if they are eligible, even if they worked without a permit.

Undocumented people can also leave the US to apply for visas at US consulates. However, there can be serious risks for undocumented people to leave and re-enter the US.
Legal Implications of Working Without Work Authorization

Regardless of whether you are working with or without authorization:

1. You should pay taxes
2. You should not use someone else’s social security number (SSN) or make up a SSN
3. You should not claim to be a US citizen, especially on a form
Questions?
Options for Working

1. Working as an *independent contractor*
   - For different company(ies),
   - By *turning current job* into independent contractor, or
   - By *turning job offer* into independent contractor

2. Creating your *own business*

3. Starting or joining a *workers co-op*

4. Working as an *employee* for a company that doesn't check work authorization

5. *Employment Visas*
1. Working as an independent contractor

### What is an Independent Contractor?

<table>
<thead>
<tr>
<th>Employee / Intern</th>
<th>Independent Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Works exclusively for the company</td>
<td>May work for other companies</td>
</tr>
<tr>
<td>Company provides tools</td>
<td>Worker provides tools</td>
</tr>
<tr>
<td>Company controls duties</td>
<td>Worker decides how the task is completed</td>
</tr>
<tr>
<td>Company sets working hours</td>
<td>Worker sets own working hours</td>
</tr>
<tr>
<td>Worker must perform services</td>
<td>Worker may hire someone else to complete the job</td>
</tr>
<tr>
<td>Worker has pension / group benefits</td>
<td>Worker does not get benefits</td>
</tr>
<tr>
<td>Worker gets paid vacation</td>
<td>Worker gets no paid vacation, and has no restrictions on time off.</td>
</tr>
<tr>
<td>Company pays expenses</td>
<td>Worker pays own expenses</td>
</tr>
<tr>
<td>Worker is paid salary or hourly wage</td>
<td>Worker is paid by the job on a predetermined basis</td>
</tr>
</tbody>
</table>

Note: These distinctions don’t apply to every employee/intern or independent contractor
1. Working as an independent contractor

Pros
- IC are their own boss
- Flexibility over their hours, clients, experiences, and earning potential
- Can claim tax deductions

Challenges
- IC don’t have the same labor protections as employees
- Many employment relationship provide benefits that IC don’t get such as min. wage, overtime, and paid vacation.
- Classification may be more difficult than just changing what forms they fill out.

Because employers don’t have to check the work authorization of independent contractors, it is a way for people who don’t have a work permit to work.
1. Working as an independent contractor

**How?**

- **Marketing yourself** as an independent contractor for different companies
- **Turning your current job** as an employee into independent contracting
- **Turning a job offer** into independent contracting

**Want to learn more?**

UndocuWorking Workshop
Thursday, April 6, 6 PM
Location: 555 W 57th St 16 Floor New York NY 10019 (BMW Building)
RSVP:
[https://www.nysylc.org/events/2023/3/10/undocuworking](https://www.nysylc.org/events/2023/3/10/undocuworking)

Learn how to turn your current job or a job offer into independent contracting and meet others asking these same questions!
2. Creating your own business

Pros:
- You are your own boss! You have the independence and flexibility to create and grow your business how you want it
- No employer to check your work authorization
- By incorporating as a business, you can
  - Hire employees
  - Create a layer of identity and liability protection
  - Access to financial capital

Challenges:
- Financial risk as it there is a high start-up cost
- Owning your own business is stressful and time consuming

There are no federal or state laws, immigration or otherwise, that explicitly bars an undocumented immigrant from owning a business
2. Creating your own business resources

Guides/Compilation of Resources
- NYSYLC's Non-Citizen's Guide to Entrepreneurship
- Resources from Immigrants Rising
- Compilation of resources on business education, regulatory assistance, legal assistance, financing assistance, and more.

Immigrants are **80% more likely** to start businesses in the U.S. than native-born citizens.

Immigrant entrepreneurs make up over **20%** of all business owners in the U.S.

Training, funding, and services:
- NYC Business Step-by-Step
- Building Your Business in New York City
- Pro Bono Legal Advice for Small Businesses
3. Starting or joining a workers co-op

In a worker’s co-op, the workers collectively own and operate the business. Each employee has an equal vote and ownership over the co-op.

**Pros:**
- A way to start a business with limited resources and experience, and where you share the responsibilities and risks with others
- Workers together determine working conditions: pay, hours, vacation pay, worker benefits
- Solidarity and community

**Challenges:**
- Democratic management is hard
- It may be harder to set up than a traditional business
3. Starting or joining a workers co-op

Training, funding, and services:
- New York City Worker Cooperative Business Development Initiative: https://www.nyc.gov/nycbusiness/article/worker-cooperatives
- New York City Network of Worker Cooperatives: http://www.workercoop.nyc/

Guides:
- NYSYLC’s The Non-Citizen’s Guide to Entrepreneurship: https://www.nysylc.org/getpaid
- Co-op Law by the Sustainable Economies Law Center (SELC): https://www.co-oplaw.org/
- Democracy at Work Institute by the U.S. Federation of Worker Co-operatives: https://institute.coop/tools/for-worker-coops

Directory of New York City Worker Co-operatives: https://nycworker.coop/business-directory/
4. Working as an employee for a company that doesn’t check work authorization

Remember:

1. It is not illegal to work without authorization. **It is not a crime.**

2. Ensuring that someone has authorization to work is the **employer’s responsibility**, not the worker’s.
5. Employment Visas

Employment visas are a limited option because:

- Usually require bachelor’s degree and work experience
- Are expensive
- Can take a long time to process
- Require leaving the US to apply, which could trigger the 3 or 10 year bar to re-entry

If you think this may be an option for you, please speak to an attorney experienced with employment visas.
Questions?
Deep Dive: Independent Contracting
How to start earning a living as an independent contractor?
How to find work as an independent contractor

1. Look for independent contracting postings!
   
   Where?
   - General job postings sites
   - Work posting sites specifically for independent contracting
   - Community job posting boards
   
   Look for: “independent contractor”, “1099” “contracting”

2. Negotiate a job offer into independent contracting
   
   When? Typically after you get an offer or close to the offer stage

   An employer cannot ask about the applicant’s immigration status or citizenship during the hiring process.

   Evidence of work authorization is not required until after there is an accepted job offer.
Negotiating job offer into independent contracting

**Benefits to the worker:**
- Be your own boss
- Control over your own work
- Flexibility
- Tax deductions for business expenses
- Gain experience and skills to start your own business

**Benefits to the employer:**
- Only pay you for the work you do
- Flexibility in staffing
- Don’t have to pay employment tax, or other benefits they may provide to employees like health insurance, and vacation pay
Responsibilities of an Independent Contractor

### Independent Contracting and Taxes

- **Must pay extra self-employment taxes on income for social security and Medicare.**
- **Receives Form 1099-MISC instead of W-2. Fills out Schedule-C in addition to Form 1040.**
- **May be required to divide taxes into quarterly payments.**
- **Can often take deductions like using a car for business purposes.**
UndocuWorking Event Series

Options for UndocuWorking Presentation
Monday, March 20 at 7pm

UndocuWorking Workshop
Thursday, April 6, 6 PM
Location: 555 W 57th St 16 Floor New York NY 10019 (BMW Building)
RSVP: https://www.nysylc.org/events/2023/3/10/undocuworking
Learn how to turn your current job or a job offer into independent contracting and meet others asking these same questions!

UndocuWorking Panel
TBA - Stay tuned by following @nysylc on Instagram and TikTok
Resources:
- NYSYLC’s The Non-Citizen’s Guide to Entrepreneurship
- Freelancer’s hub: NYC workshop and services for ICs; including a healthcare program
- Immigrant Rising’s A Guide to Working for Yourself
- Independent Consultant Network, e.g., IQ Workforce
- How to Become an Independent Contractor: A Step-By-Step Guide

Next Event: UndocuWorking Workshop
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