

New 1099-NEC forms: The myths and the need-to-know



Form [1099-MISC](#) is out; Form 1099-NEC is in. Every business that hired independent contractors and expects to pay them at least \$600 this year must now report on Form 1099-NEC. The form must be received by Independent contractors by February 1, the same day the IRS must receive your paper or electronic forms.

The penalties for failing to file 1099-NEC forms correctly and on time aren't chump change anymore. Beginning with forms filed next year, the penalty for failing to file correctly is \$50. That's only if you manage to file the correct forms within 30 days of your mistake - penalties increase the longer you wait.

So now is the time to make sure you know the 1099-NEC facts and stay in good graces with the IRS.

Myth #1: Every independent contractor gets Form 1099-NEC

Reality: The only independent contractors who must receive 1099-NEC forms are individuals who do business in non-corporate forms. Examples include sole proprietorships, partnerships, or disregarded entities or limited liability companies that don't elect to be treated as corporations. In addition, you must have paid them at least \$600 *in cash* for services they provided to your business. There are two key exceptions:

- Regardless of how much you've paid independent contractors, provide them with forms if you backup withheld on their payments during 2015.

- Attorneys who do business as corporations must also receive forms.

Myth #2: Independent contractors who use the word “Company” in their letterheads don’t need to be provided forms

Reality: Using the word “Company” on letterhead, business cards, invoices, etc., isn’t enough to tell you whether they’re doing business in a corporate form. You need to go one step further and ask them about their business structure. If they don’t tell you that they do business as a corporation, provide them with a 1099-NEC. Remember, you can never go wrong by providing too many forms, but you can be subject to tax penalties if you provide fewer.

Myth #3: Employees who do side work for their employers always get 1099-NEC forms

Reality: The general rule is that employees should receive W-2 forms for all of their work for the same employer. Providing a W-2 form and a 1099-NEC form to the same employee usually piques the IRS’ interest. Nevertheless, there are several situations where a W-2 and a 1099-NEC may be appropriate:

- The employee is a corporate director who received at least \$600 in directors’ or other fees.
- The employee retired or was terminated and returned to work in a different capacity. *Warning:* Returning to work as a consultant, and doing substantially similar work, probably doesn’t pass muster under the different capacity standard.
- The employee’s *bona fide* separate company performs services for your company. For example, an employee may set up a separate company that cleans your office, as well as other offices. *Warning:* Protect yourself from prying IRS eyes by ensuring that the employee’s company actually offers its services to other businesses; collect advertisements and keep them in the company’s vendor file.

Myth #4: Vendors who give company-provided prizes to employees are on the 1099-NEC hook

Reality: If the company buys a prize, like a door prize at a holiday party, and the item is simply distributed by a vendor (instead of by the company), the value of the prize is included in the employee’s income and is subject to tax withholding and annual reporting on a W-2 form, not a 1099-NEC form.

If the prize is bought and paid for by the vendor, the vendor completes a 1099-NEC for the employee.

Myth #5: The only forms that can be used are the official IRS forms

Reality: You may use substitute forms, provided they meet all of the requirements in IRS [Pub. 1179](#).

Myth #6: Filing with the IRS satisfies state filing responsibilities as well

Reality: The Combined Federal/State Filing Program (CF/SF) was established to simplify information returns filing for payers. Through CF/SF, the IRS electronically forwards information returns (original and corrected) to participating states. But Form 1099-NEC isn’t among the forms that qualify for this sharing program. Consult IRS [Pub. 1220](#) for more information.