



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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MEMORANDUM FOR PATRICE SADOWSKI  
New Jersey District

FROM: Patricia McDermott  
Senior Technician Reviewer  
CC:EBEO:Br.2

SUBJECT: Classification of attorneys and engineers

This is in response to your request for advice on whether compensation paid to professionals, such as attorneys and engineers, should be reported on Form W-2 rather than on Form 1099-MISC. You describe the situation where a professional receives a Form W-2 for some of the compensation from a particular entity and a Form 1099 for other compensation from the same entity.

The proper form for reporting compensation depends on the worker's status. That is, amounts paid to an employee are reported on Form W-2; amounts paid to a worker who is not an employee are reported on Form 1099-MISC, subject to a \$600 threshold. See § 31.6051-1(a)(1) and § 1.6041-1(a)(2).

Whether a worker is an employee or independent contractor depends on the facts and circumstances of the particular case. See "Independent Contractor or Employee?" Training 3320-102 (Rev. 10-96) TPDS 842381. Therefore it is not possible to provide an across-the-board answer as to whether compensation should be reported on Form W-2 rather than on Form 1099 in the situations you describe. In addition, it is possible for a worker to have a dual status, that is, to be an employee with respect to one type of service and the compensation for that service, while being an independent contractor with respect to another type of service and the compensation for that service. See Rev. Rul. 58-505, 1958-2 C.B. 728, and page 2-5 of "Independent Contractor or Employee?"

In summary, it is necessary to determine whether compensation paid to a worker is compensation for service as an employee or compensation for service as an independent contractor. Once that is determined, compensation for service as an employee is reported on Form W-2, and compensation for service as an independent contractor is reported on Form 1099-MISC.

I hope this information is helpful to you.