

## Frequently Asked Questions: Options for UndocuWorking Presentation

### SSNs & ITINS

#### **If DACA ends, do I lose my social security number (SSN)?**

*Answer:* No, you will not lose your social security number (SSN). Your SSN is yours for life regardless of your immigration status or any chances to your immigration status. However, your SSN does not give you work authorization. That means if you lose DACA, you cannot use your SSN to work as an employee unless you change to acquire another immigration status that has work authorization. You can continue to use your SSN to do other things like open a bank account.

#### **What is an ITIN? How do I create an ITIN?**

*Answer:* An ITIN is an Individual Tax Identification Number. It is a tax processing number issued by the Internal Revenue Service. They are issued regardless of immigration status. It does not give work authorization. Some banks let you open a bank account with an ITIN. If you already have a SSN, you do not need an ITIN. To apply for an ITIN, you fill out a [W-7 form](#) and submit it to the IRS. However, this process can be complicated. You have to submit the W-7 form with a federal tax return, and it requires original documents, like your passport, unless you work with an IRS-authorized Certified Acceptance Agent or IRS Taxpayer Assistance Center. We advise avoiding sending the IRS original documents and working with an Certified Acceptance Agent, which you can find a list of [here](#) (New York), or going to a IRS Taxpayer Assistance Center, which you can find a list of [here](#).

#### **I have an ITIN. Do I have work authorization?**

*Answer:* Unfortunately, no. An ITIN does not give work authorization. It is a tax processing number that you can use to file your taxes and open a bank account at some banks if you do not have an SSN.

### Becoming an Independent Contractor or Starting a Business

#### **How do I become an independent contractor? (resources)**

*Answer:* An independent contractor or freelancer is a self-employed person or entity contracted to perform work for or provide services to another business/person as a non-employee. Since you will be your boss, you will need a change of mindset from working as an employee. You may want to find your area of expertise, whether a service or a product, market yourself, network, and most importantly, believe in yourself.

There are lots of resources to help you become an independent contractor.

- [NYSYLC's The Non-Citizen's Guide to Entrepreneurship](#)
- [How to Become an Independent Contractor: A Step-By-Step Guide](#)
- [Immigrant Rising's A Guide to Working for Yourself](#)
  - [5 Tips to Get Started as an Independent Contractor/Freelancer](#)
- [Income Generation Options for Undocumented Students Toolkit](#)

**As an independent contractor, do the companies I contract with need to know whether I have work authorization?**

*Answer:* Employers are **not** required by law to check the work authorization of independent contractors, unpaid volunteers, and workers who provide sporadic or intermittent services in private homes. When you contract with the company(ies), you will **contract with a W-9** instead of an I-9. You can fill out the W-9 with an **ITIN or an SSN**.

However, if an employer has **actual knowledge** that the contractor/freelancer does not have work authorization, they are not supposed to work with them. Doing so could have similar consequences for the employer as hiring an employee without a work permit.

**If my employer knows I have DACA, is there any chance I can convert to an independent contractor in that same workplace?**

*Answer:* Yes, there definitely is a chance. In fact, this is a great time to convert to an independent contractor. This is because while you have DACA, you have work authorization, and an employer is able to work with you as a contractor just like they are able to work with you right now as an employee. By converting to an independent contractor now, the employer will not need to check your work authorization now or in the future. Even if DACA ends, the employer does not know if you lost work authorization when DACA ended or if you had gotten another immigration status in the meantime. Remember: the key is the employer's knowledge!

**If I want to work as an independent contractor do I also have to start a business?**

*Answer:* No you do not have to start a business. For some people, starting a business will allow them the opportunity to hire more people, chase bigger contracts that offer more money, and have more legal protections than a solo contractor.

**Can I start a business without an SSN? With an ITIN?**

*Answer:* There are no citizenship or residency requirements to form a business in the U.S. or get an Employer Identification Number (EIN). You don't need an SSN to start a business as you can use an ITIN by filling out a [W-7](#). The ITIN will allow you to get an EIN online. You can also get an EIN without an ITIN or SSN by sending [Form SS-4](#) to the IRS by mail or fax.

**How do I find healthcare as an independent contractor or business owner?**

*Answer:* If you run your own business and have no employees, or are self-employed, your business won't qualify for group coverage. You can purchase qualified health coverage through the [Marketplace for individuals and families](#). If you have less than 100 employees, you can offer employees a choice of plans through the [NY State of Health Small Business Marketplace](#). Most immigrants in New York can purchase private plans on the [NY State of Health Marketplace](#). Some immigrants who have low income or no income may qualify for [NYCCare](#) or are eligible to receive services under the NYC Health + Hospitals Options program. For more resources, please check out [Freelancers Union](#).

## Taxes

### **As an undocumented person, do I have to file taxes?**

*Answer:* Yes, everyone is required to file taxes regardless of their immigration status or whether they have work authorization or not.

### **As an independent contractor, do I have to pay taxes? What is the difference from filing taxes as an employee?**

*Answer:* Everyone, regardless of their immigration status or work authorization, is required by law to pay taxes. Not paying taxes or reporting your income can be a crime. Individuals who do not have an SSN can pay taxes using an ITIN.

As an employee, the employer withholds taxes from each paycheck and sends the money to the government. As an employee, the employer covers half the cost of the Medicare and Social Security taxes. Employees are provided a W-2 by their employer to submit their taxes.

Paying taxes as an independent contractor is more complicated. Independent contractors must pay income tax ([using Schedule C](#)) and self-employment tax ([using Schedule SE](#)), which is a combination of Medicare and Social Security taxes. As an independent contractor, consider paying your taxes quarterly, so you don't have to pay a large lump sum once a year.

### **If I file taxes will ICE find out that I'm working or that I'm in the U.S.?**

Some laws prevent the IRS (tax authorities) from sharing tax information with immigration authorities. Since IRS is provided a great amount of personal information, privacy is critical to the IRS. The Internal Revenue Code states that the IRS is not authorized to release taxpayer information to other government agencies **except for providing information to the Treasury Department for investigations that pertain to tax administration, or under a federal court order related to a non-tax criminal investigation.**

## Rights in the Workplace

### **Do I have rights as an undocumented worker?**

*Answer:* Yes undocumented workers have worker rights regardless if you are working off the books or on the books. Many worker rights are for employees, such as minimum wage protections. Independent contractors don't get these same protections. However, whether someone gets worker rights or not because they are an employee or independent contractor is more complicated than what you or your employer consider your work structure to be. Undocumented workers, even if you are an independent contractor, can still submit a complaint to the Department of Labor to investigate violation of labor rights, and find resources online to learn more about your rights as an undocumented worker

- **Learn about your rights:**
  - [National Immigration Law Center Information on Worker Rights](#)

- [NYC Government Information for Immigrant Workers](#)
- **File a complaint:**
  - [New York City Consumer and Worker Protection: file a workplace complaint](#)
  - [New York State Department of Labor - Immigrant Policies and Affairs](#)
  - [Federal Wage and Hour Division complaints](#)

### **My boss treats me differently from documented workers. What can I do?**

*Answer:* Undocumented employees are entitled to the same benefits as documented employees. We know that many employers do not treat their undocumented employees equally and may not give them benefits or pay them fairly. You can submit a complaint to the Department of Labor to investigate violation of labor rights, and find resources online to learn more about your rights as an undocumented worker. For example, if an employer refuses to pay you by saying that you should not have been working in the first place because you have no "papers," you can file a complaint. However, it is always a risk that an employer may respond by requesting proof of work authorization and firing you if you are not able to show proof.

Unfortunately, independent contractors are not entitled to the same benefits as employees. However, companies must compensate you properly in accordance with your contract, including by providing any benefits set out in your contract. If the company is not paying you properly, is breaking a term of the contract, or is retaliating against you, you can file a freelance worker complaint with New York City Consumer and Worker Protection.

- **Learn about your rights:**
  - [National Immigration Law Center Information on Worker Rights](#)
  - [Freelancers Union: Guide to NYC's Human Rights Law](#)
  - [NYC Government Information for Immigrant Workers](#)
- **File a complaint:**
  - [New York City Human Rights Commission: file a complaint of discrimination based on immigration status](#)
  - [New York City Consumer and Worker Protection: file a freelance worker complaint](#)
  - [New York City Consumer and Worker Protection: file a workplace complaint:](#) You can also file a complaint to NYC Consumer and Worker Protection and they can refer you to the right department for the complaint

### **What do I do if during the process of looking for independent contracting work the company asks me about my immigration status?**

*Answer:* A potential employer cannot ask about the applicant's immigration status or citizenship in the hiring process, although they can ask you if you have work authorization. If a potential employer asks about your immigration status, you can file a complaint to the NYC Human Rights Commission for discrimination based on immigration status.

- **File a complaint:**
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- [New York City Consumer and Worker Protection: file a workplace complaint](#): You can also file a complaint to NYC Consumer and Worker Protection and they can refer you to the right department for the complain

**What is the impact of telling my boss I'm a U.S. citizen or working with a fake SSN?**

**Answer:** Claiming to be a U.S. citizen or working with a fake SSN can have serious immigration consequences and is a crime. Claiming to be a U.S. citizen could be a cause for deportation and will prevent someone from being able to re-enter the U.S. if they travel or attempt to change their status. We don't want to scare folks who have already done this, but for folks who are considering this, it is important to know the risk.