

Options for Working Workshop - Content

Introduction

SLIDE 1

Introduce YLC

Introduce NYU IRC

- We are students at the New York University School of Law and part of the Immigrant Rights Clinic. We engage in the direct legal representation of immigrants and community orgs, and support immigrant rights campaigns at the local, state, and national levels. We focus on dismantling systems that criminalize immigration and advancing immigrants' access to justice, education, and community resources.

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Introduce workshop:

- As you are likely aware, DACA is under threat, and hundreds of thousands of folks on DACA are at risk of losing their work authorization
- In addition, there are even more undocumented folks in the US who are not eligible for DACA or never had an opportunity to apply for DACA, and have been working in the US to support themselves and their families
- Today, we are building on the experience of the many immigrants who have experience working with or without authorization, to discuss ways undocumented folks can support themselves with or without DACA
 - One focus is specifically on independent contracting, which is a way undocumented folks have used to work for many years
 - Our focus is on the options for undocumented people, including folks with DACA. This information does not apply for folks who have other statuses, like F-1s
- We had a few questions about this in the RSVP so we want to let folks know that this webinar will not discuss how to get immigration status, green cards, or getting work authorization. Instead, we will focus on how undocumented people can make income with or without work authorization. Eligibility for immigration status is so situation-specific that unfortunately, we won't be able to discuss it in this webinar today. Instead we suggest folks do an immigration screening with an experienced attorney, even if you have done one in the past.
- Additionally, we won't be able to answer everyone's questions today given the limited time and how much information we're covering. We will send out an email after the workshop with the slides and the answers to some frequently asked questions, and we hope that folks can make it to our future events in the series.
- Agenda:
 - Understanding work authorization and how employers are required to check work authorization of employees

- Legal consequences of working
- Different options for working
- Diving in deeper into how to be an independent contractor, including how to turn your current employment using DACA into an independent contracting position to try to stay at your current job

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Background of Work Authorization

- For a noncitizens and non-green card holders to be authorized to work in the U.S., the noncitizen must obtain an Employment Authorization Document (“EAD”) or work permit.
- Employers are required to verify the identity and employment authorization of individuals hired for employment by completing the [I-9 Forms](#) (include form in the Slides) at the beginning of the employment. Employers store copies of these records.
 - This applies to citizens and noncitizens
 - They could ask for reverfication if the work permit expires
- However, employers don’t need to check the work authorization of independent contractors, unpaid volunteers, and workers who provide sporadic or intermittent services in private homes

For undocumented folks who do not have DACA, completing an I-9 and working as a traditional employee is not really an option. That’s why today, we’ll be talking about how people can earn money without a work permit. And for folks who are working as an employee with DACA right now, how you could prepare yourself for the situation where DACA ends

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Legal Implications of Working without work authorization

Two really important things to know:

1. It is not illegal to work without authorization. It is not a crime.
2. Ensuring that someone has authorization to work is the company’s responsibility, not the worker’s
 - a. An employer could get in trouble for hiring someone who does not have work authorization or working with an independent contractor who they know does not have a work permit. This happens very rarely, and when it does, the penalties are warnings and fines
 - b. As a worker, you cannot be fined for working without authorization, but you could be fired by the employer if they were to be investigated or fined.

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Let’s talk about if unauthorized work might have immigration impacts:

- Although sometimes, working without authorization can impact eligibility for future immigration statuses, this is largely not the case for undocumented people. This is because undocumented people are unfortunately limited in what types of visas they can apply for in the US.
 - The immigration statuses that undocumented people can apply for when in the US don't exclude people because of working without a permit
 - For example, some people who are immediate relatives of a US citizen can get a green card, even if they are undocumented, have ever been undocumented, or if they have worked without authorization
 - Immediate relative is a legal term that has a specific meaning that is not our common meaning of the term. It means their spouse is a US citizen; OR they are unmarried, under 21 years old, and their parent is a US citizen; OR their child that is 21 or older is a US citizen.
 - Other examples are other specialized visas, like those for victims of trafficking or crime or special immigrant juveniles. Working without a permit won't impact your ability to get those if you fall in this scenario
- There are also visas people can apply for where they have to leave the US to interview at a US consulate outside of the US. This is consular processing
 - Working without a permit won't prevent someone from being able to get these visas, either.
 - However, other challenges make it risky for undocumented folks to travel and try to re-enter the US, because it may result in a 3 or 10 year bar from re-entering the US
 - There are ways to get a waiver, but it depends on your situation
 - Always best to talk to a lawyer before any travel
- Temporary/nonimmigrant visas
 - Not generally an option for undocumented people because it requires that the person has a permanent residence outside of the U.S.
 - Often require an individual to leave the country to obtain a visa, which also triggers the 3 or 10 year bar
- So in summary, in most cases, working without a permit in itself won't prevent an undocumented person from being able to get another immigration status in the future
- Remember, this advice is for undocumented people only; if you have another immigration status right now, the consequences for working without a permit could be different for you!!

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Regardless of whether you are working with or without authorization,

- You are required by law to pay taxes. Not paying taxes or reporting your income can be a crime
 - There are laws that prevent the IRS (tax authorities) from sharing your information directly with DHS/ICE (immigration authorities), but if you are applying for some kind of immigration status or relief, immigration authorities might require you to send them your tax returns
- You should not use someone else's SSN or make up a SSN on I-9 employment or other forms
 - Doing so is a crime and can lead to even worse immigration consequences

- 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 risks!
- Don't claim to be a US citizen - that has more severe consequences
 - The government really does not like this
 - This has severe immigration consequences - can be a cause for deportation; and will prevent someone from being able to ever re-enter the US if they travel or from changing status
 - Also a crime
 - One of the most common false claims to U.S. citizenship occurs is checking "U.S. citizen" on an I-9 Employment Eligibility Verification.
 - Again, 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 risks!

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QUESTIONS

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Options for Working

Overview

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

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1. Working as an independent contractor

What is an independent contractor?

- An independent contractor is not an employee
- 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.
- Independent contractors can control their schedule, work product, who they work for, and more.

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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. Remember, working without a permit is not a crime, and for undocumented people, it generally isn't a barrier to getting an immigration status in the future

- However, if an employer knows the contractor/freelancer does not have work authorization, they are not supposed to work with them, and doing so has similar consequences for the employer as hiring an employee without a work permit

Pros/Cons of working as an independent contractor

- Pros:
 - As an independent contractor, you are self-employed so the company does not need to check your work authorization.
 - Unless they have knowledge that you don't have work authorization
 - IC have flexibility over their hours, clients, and more.
 - You are free to work for multiple employers and build experience being your own boss, which can help you get work experience, make more money, and even prepares you to start business or a worker's co-op in the future
- Cons:
 - As will be discussed at our second event, this is not as simple as changing what employment forms you fill out, convincing your company to let you do this can be difficult, and may not work at every company
 - An independent contractor does not have the same labor protections as employees, like minimum wage and overtime protections
 - However, this is complicated because, under the law, an independent contractor could still be seen as an employee based on different factors, such as the structure of the IC's job. We'll release a pamphlet with more information about your workers' rights, even as an independent contractor, so look out for that! If you think you have a labor claim, reach out to an attorney!
 - Independent Contractors don't get employee health insurance, unemployment insurance, or paid vacation days.

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How to become an independent contractor?

- Marketing yourself as an independent contractor
- Turning your current job as an employee into independent contracting
 - This may be especially timely for those with DACA now since they have work authorization. Right now, there is an opportunity to build yourself up as an independent contractor. Especially since your employer won't have actual knowledge when DACA hypothetically ends since peoples' statuses change and they aren't asking for your work permit
- Turning a job offer into independent contracting

We'll talk more about how to be an independent contractor after we go through all the options. On April 6, at 6 pm, where we'll discuss how to negotiate converting a job or job offer into independent

contracting, and create space for problem-solving and peer discussions about what independent contracting could look like for each of us. We hope you can join us.

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2. Create your own business

There are no federal or state laws, immigration or otherwise, that explicitly bars an undocumented immigrant from owning a business. Anyone can start a business using an ITIN or an SSN.

Pros/Cons:

- Pros
 - You are your own boss. No one will check your authorization and you are provided the independence and flexibility to create and grow your business how you want to.
 - By incorporating as a business, you can
 1. hire employees (note that as a business owner if you hire people, the same regulations that employers have to follow about work authorization will also apply to you, meaning under the law, you are required to check if your employees have work authorization)
 2. create a layer of identity and possibly liability protection between the person and the business
 3. avoid questions related to work authorization
 4. grow your client base and income perhaps more than an independent contractor could, and
 5. access financial capital for business.
- Cons
 - There is a big financial risk as lots of business take up high start up cost for materials, business establishment, and monthly obligations such as rent.
 - Owning your own business is a very stressful time commitment.

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Immigrants make up a large percentage of business owners in the U.S. There are many great resources that can help you through the steps of starting your own business, from choosing the business structure to registering the business to obtaining business licenses and permits.

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3. Starting or joining a worker's co-op

What is a worker's co-op?

- A worker co-operative, also known as a worker's co-op, is a business where the workers both collectively own and operate the business.

- Members invest labor and/or money into the worker's co-operatives and collectively decide how the business will run. All members share in the profits of the business. Each employee has an equal vote and ownership over the co-op
- There is a membership fee for each member, but the amount of the fee is up to the co-op

Pros/Cons of worker's co-ops

- 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: From being part of a worker's co-op; being part of a network and growing movement of other worker's co-ops in New York and beyond.
- Cons:
 - Democratic management is complicated, and time and resources are necessary to do it well.
 - Because a worker's co-op involves multiple people who collectively own and operate a business, it requires more effort to start than starting a business on your own
 - However, there are lots of samples and resources online for incorporating co-ops, which will make the process much faster
 - Worker's co-ops can have more administrative needs than a one-person business, including a structure to pay worker-members, collectively manage finances, and make management decisions.

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Lots of training and resources to start and run a worker's co-op, especially in New York and California. New York City has a policy to support worker's co-ops.

If you are interested in joining an existing worker's co-op instead of starting one, check out the [Directory of New York City Worker Co-operatives](#) (slide) to learn about worker's co-ops in NYC. Reach out to co-ops you would be interested in joining!

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

- Remember, it is not illegal to work without a work permit is not a crime.
- Although, we have been discussing ways to change the way you work, and sometimes where or how you work, or how to start working without work authorization, you may be in a situation where you are working as an employee and you don't need to change that because your employer does not check work authorization.

- However, even if your employer did not check your permit when you started working or did not ask you for an updated work permit, they could ask you for a valid work permit at any time, and it is a risk that you may lose your job if you are unable to show one.

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5. Employment Visas

- Employment visas are an option for undocumented people. However, because it typically requires a bachelor's degree and work experience, can be quite expensive and time-consuming, and may require the individual to leave the country (b/c of the bars), it is a limited option. We unfortunately don't have the time to talk about this, but if you think it might be an option for you, please consult a lawyer experienced with employment visas.

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QUESTIONS

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How to be an Independent Contractor

Reminder of what an independent contractor is

- 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.
- 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.

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How to Start Earning a Living as an Independent Contractor

- As you will be your boss, you will need a change of mindset from when working for an employer. Now you must find your area of expertise, whether a service or a product, market yourself, network, do your taxes, and most importantly, believe in yourself
 - Think about the things you are good at and how you can get people to pay you; think about needs in your community and how you can use your skills to support the people in your community (credit: Laura Pamplona from YLC who led a workshop in January on Monetizing your skills as an undocumented person)
- Types of Independent Contracting
 - Working as a Professional Service Provider
 - Depending on your expertise, skills, certification, and professional and academic background, you can offer professional services to the public.

- Some states require certifications or special licenses for some of these professions, and most people who have never had a status such as DACA or TPS will have trouble getting a professional license
- But there are also many professions that don't require licensing: Tutors, tech support, videographer, software engineer/computer programmer, graphic designer, etc.
 - Includes: Accounting, advertising, legal, medical, computer programming, photography, landscaping, construction, real estate, cosmetology, and more
- Participating in the Gig Economy
 - Includes:
 - Driving for car services
 - Selling products or services on sites on in person such as Etsy or Herbalife
 - Freelance writer, web designer, or musician
 - Working for pay apps such as TaskRabbit
 - Renting spaces in your personal homes such as Airbnb

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How to find independent contracting work

One way is looking up independent contracting postings online. Companies will post that they are looking for an independent contractor on job posting sites like indeed and ziprecruiter

- These job postings will include words like “independent contractor,” “1099,” “contracting,” “flexible,” and will in most cases pay by the hour

Another way to find independent contracting work is finding a job posting that is posted as a traditional employee job, and ask if this job could work with you as an independent contractor.

- This is typically done after you have an offer, or when you are sure that they want to work with you
 - You know they want to work with you, because of your skills and what you bring to the company! Now you have to convince them that you can do this job as an independent contractor
- An employer cannot ask about the applicant's immigration status or citizenship in the hiring process.
 - Often employers ask a candidate in the application if they are authorized to work in the United States. If the field isn't mandatory, you may leave it blank. You should answer these questions truthfully. Making a false statement or attestation to satisfy the employment eligibility verification requirement may be considered engaging in fraud or false statement which you may be fined/imprisoned and this has immigration consequences.
- Evidence of work authorization is not required until after there is an accepted job offer. If you are able to negotiate a job offer to become an independent contractor, the employer would not need to know about your work authorization.

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- When discussing this, you should not tell the person it is because of your immigration status or lack of work authorization. You should mention the benefits of being an independent contractor for you and the company
 - Many people become independent contractors for a whole range of reasons. Common benefits to you of being an independent contractor include:
 - Be your own boss
 - Control over your own work - creativity!: As an independent contractor, you may have more control over the direction of your work
 - Flexibility over working hours
 - Flexibility in where you work: at home, in an office, at a cafe, hybrid
 - Tax deductions for business expenses (ex. travel, office equipment): which offset your business income and lower the amount of tax you pay
 - Experiment with different ideas and fields and gain experience and skills to start your own business
 - There are also many benefits to the company in working with you as an independent contractor:
 - They only pay you for the work you do and for the time you spend working on projects for the community
 - It gives them more flexibility in staffing for future projects
 - They don't have to pay employment tax, vacation pay, and health insurance for you
 - Of course, as we discussed, we would want you to then negotiate a higher pay rate that makes up for how you need to pay this out of your own pocket

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Responsibilities of Independent Contractors

Independent contractors are self-employed, so there are some additional things you must do regarding taxes and forms, and you won't get the same benefits as other employees get

- Since IC are not employees, independent contractors are responsible to pay their own Social Security and Medicare taxes. They must also pay self-employment and income taxes, which are higher than taxes you pay as an employee. Taxes can be filed using an ITIN.
- You also won't get employee health insurance, so you need to be responsible for your own health insurance.
- You will need to negotiate your own rate, and to negotiate a higher rate than you would as an employee, because you need to account for paying for your own taxes, health insurance, and not getting paid vacation days.
- You need to make sure you have a contract that sets out the terms of your work, including your rate, how often you will be paid, and the expectations for your work
- You will likely need to issue invoices to the employer in order to be paid.

- An independent Contractor provides the entity they are contracting with a W-9, instead of using an I-9. This form requires either an ITIN or an SSN.
 - If you don't already have an SSN, you can apply for an ITIN by filling out a W-7 application and submitting it to the IRS ([ITIN](#) for the slides). If you have an SSN, you can keep using that number even if you no longer have work authorization, but the SSN itself does not give someone work authorization
 - ITIN is a tax processing number issued by the Internal Revenue Service. They are issued regardless of immigration status. It does not give work authorization. Many banks let you open a bank account with an ITIN

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Introduce Next Event

At our next event, we'll talk about how to negotiate a job offer into independent contracting more in depth. Additionally, we'll discuss how to convert your current job into independent contracting.

Our next event will be on Thursday, April 6 at 555 W 57th St 16 Floor New York NY 10019 (BMW Building)

Please RSVP as soon as possible! This will be a closed event for folks to talk more openly about how to make an income as an undocumented person, and to practice these skills of negotiating with their employers or potential employers

Later on, we will have a panel event featuring people who have experience working in the different styles we talked about today. Please stay tuned!

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QUESTIONS