

# Independent 1099 contractors offer options, introduce questions

BY MARGARET CASHILL  
STAFF WRITER

**TAMPA** — Companies use independent 1099 contractors for a variety of reasons, usually depending on the industry.

Across different fields, employers cite the benefits of flexible work arrangements and decreased overhead — but there are some important boundaries and rules for employers to keep in mind.

At Werner-Donaldson Moving Services Inc. in Tampa, 1099 contractors help President Ken Seibert manage the ebb and flow of seasonal business.

Currently the moving company has two 1099 contractors on a staff of roughly 30 employees. The firm brings in contract labor in the summer when most moves occur.

The contractors bring in their own truck and equipment and usually have years of experience, Seibert said.

“A lot of guys who do this work want to become contractors and run their own businesses,” he said. “I never have to worry about contractors coming on board without experience.”

Meanwhile, Tampa law firm Gardner Brewer Martinez-Monfort works with 1099 contractors to create flexible work roles and reduce overhead. The firm can also take advantage of available talent in the market this way, said Partner Christopher Brewer.

Currently the firm has six full-time employees and five 1099 contract employees. Contractors who come on board usually have a prior relationship with the firm, Brewer said.

“Legal services is a personal relationship based on trust, and it requires the right fit,” he said.

### LESS PRESSURE

During the economic boom, compensa-



KATHLEEN GABBLE

Ken Seibert, right, president of Werner-Donaldson Moving Services Inc., talks about an upcoming job with 1099 contract employee Travis Lineherger, owner of Travis Lineherger Moving Services. At left, Brian White, warehouseman for Werner-Donaldson, preps storage containers for delivering household goods out of storage.



tion increased dramatically, but so too did expectations and requirements. The 1099 arrangement eases up those restraints.

“While contract employees no longer have the full-time arrangement, the new relationship provides flexibility,” Brewer said.

Technology helps make the arrangement

possible when the contractors often work from home.

“I think we’ll see more of it in the future, driven largely by a work force availability of very qualified people,” Brewer said.

As more companies consider working with 1099 contractors, it’s important both for employers and employees to understand the boundaries of the arrangement, said Ignacio Garcia, a lawyer with labor and employment law firm Ogletree



Garcia

## Small business burden

The U.S. House of Representatives on March 3 voted to repeal the health care reform provision that required businesses to file 1099 reports with the IRS when they spent more than \$600 with other business.

This followed the Senate’s vote in February for the same.

President Obama endorsed repealing the new 1099 requirements in his State of the Union 2011 address. The provision “placed an unnecessary bookkeeping burden on small businesses,” he said.

How to make up for the tax revenue that would be lost has yet to be determined.

— Margaret Cashill

Deakins Nash Smoak & Stewart PC.

The rights of a 1099 contractor are not the same as those of a full-time employee. While these contractors do not have taxes withheld from their wages, they don’t receive health benefits, overtime or paid vacation.

Workers’ compensation and discrimination claims generally are all off the table and the employer does not have liability under employment laws.

“You’re there for the end product, the end result of the service,” Garcia said.

A good analogy is hiring a person to mow the lawn. The tools these contractors use, what they wear or how they handle themselves are less important than the end result — a mowed lawn.

“The bottom line is how much control are you exerting,” Garcia said. “Are you managing the day-to-day of how they do their job?”

Typically one sees 1099 contractors in labor-intensive industries, Garcia said. They are also common in sales and marketing and advertising, among others.

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# ‘Imperfect’ E-verify system the subject of statewide business debate

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A free Internet program run by the U.S. government is gaining traction as part of the hiring process but has become part of the statewide debate on immigration reform.

The result of a collaboration between the Department of Homeland Security and the Social Security Administration, E-verify allows employers to enter a prospective employee’s I-9 information into a database to verify eligibility to work in the U.S.

Gov. Rick Scott in January passed an executive order requiring newly hired state employees to go through E-verify.

## TIMELINE

**1996:** The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorizes E-verify.

**1997:** Basic Pilot Program launched.

While E-verify is not yet mandated for private businesses, the regulation affects companies doing business with the government.

“The reality is, if you want to do state work, you have to go through E-verify,” said Ignacio Garcia, a lawyer with Ogletree Deakins Nash Smoak & Stewart PC.

Larger and more institutionalized companies may be likely to use E-verify, but

**2007:** Basic Pilot renamed E-Verify.

**2008:** U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement sign memorandum of agreement to share information between agencies.

**2009:** Federal contractor regulation takes effect.

**2011:** Gov. Rick Scott issues executive order for state agen-

there’s no profile of a company that uses the program, said Christian Zeller, a lawyer with the Tampa offices of Maney & Gordon PA.

It could be a giant conglomerate or a mom-and-pop shop or anyone in between, Zeller said.

The system is not flawless, said Bill Flynn, head of the immigration practice group at Fowler White Boggs.

While the concept — to provide an em-

ployer someplace to go to verify employment — is well-intentioned, it introduces the possibility of errors.

“It’s an imperfect system,” Flynn said of E-verify.

Comprehensive immigration reform would most likely mandate a system like E-verify, Flynn said.

He also encourages agencies not under the direction of the governor to use the program.

**INFO:** More than 238,000 employers were enrolled in E-verify, and more than 16 million queries ran through the system in 2010, according to the Department of Homeland Security.

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