

The New York State Youth Leadership Council



The Non-Citizen's Guide to Entrepreneurship





The U.S. is a country that was built using the labor, forced and voluntary, of many marginalized peoples; yet it has constructed roadblocks denying low-income Black and Brown folks access to the “American Dream.”

We see this in our inhumane immigration laws, the school-to-prison pipeline, and the systematic barriers to re-entry for formerly incarcerated people.

But communities have historically survived these systems of oppression, and this moment is no exception. Many would have us believe that now is a time of scarcity, but there is abundance: abundance of ingenuity, abundance of talent, and abundance of resources. We hope that through this Guide, we can signal to you the wealth of opportunities for dignified work that have been created and that we too can create.

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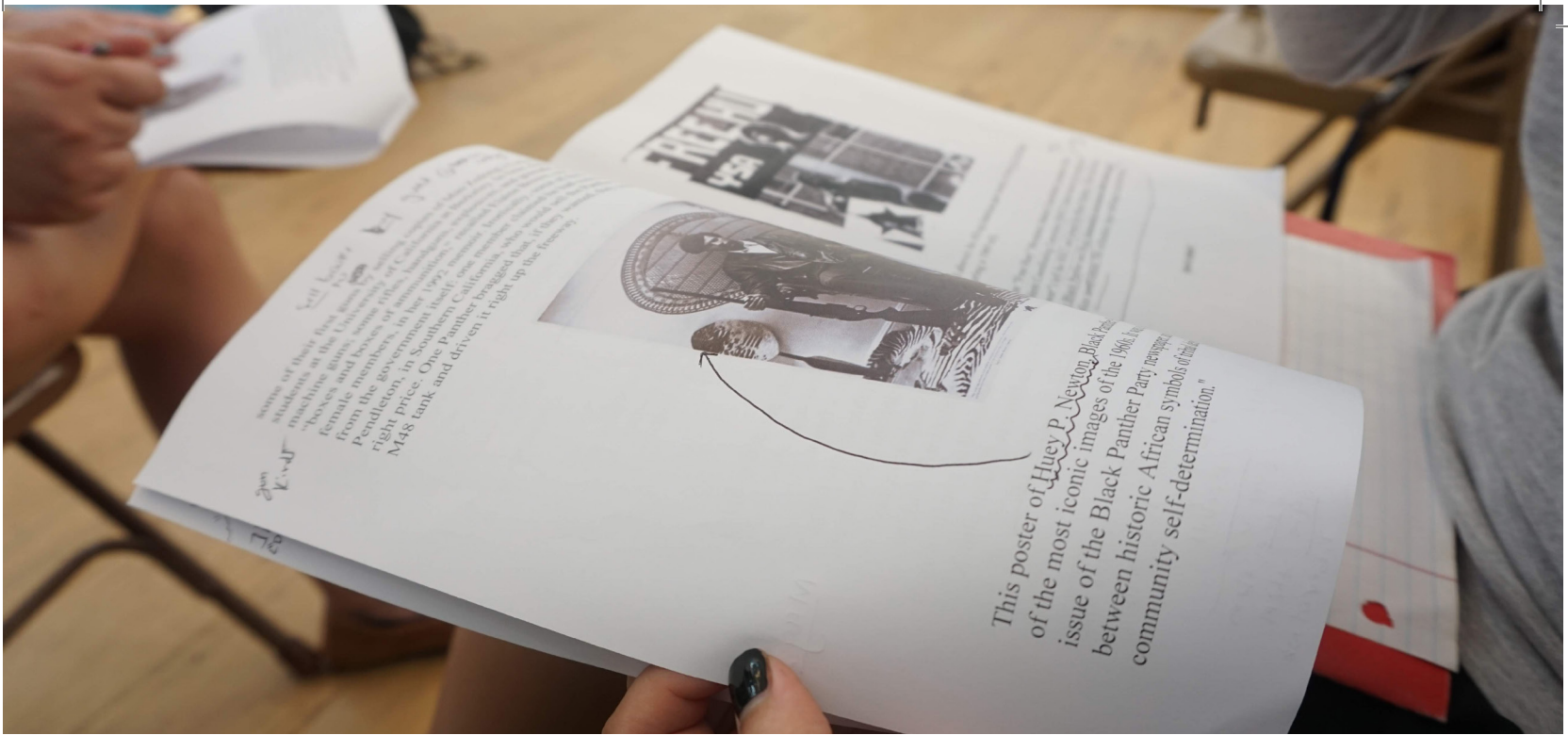
Introduction

About this Guide

Whom this Guide is for:

In today's political climate, it can feel tough to plan your life as a non-citizen if you either don't have legal status in the U.S. or are worried that you might lose your status. Specifically, you might think that your work options are limited, or you might not like the options you see. Either way, this Guide is here to help provide all non-citizens, regardless of status, with an idea of the possible work and entrepreneurial options available, including if:

- you do not currently have legal status in the U.S. because you came to the U.S. without a visa, overstayed a visa, or do not have legal status for another reason;
- you have DACA or TPS but are worried that you might lose that status; and/or
- you have an immigration status that gives you work authorization and does not restrict the type of work you can do in the U.S.



A few notes about DACA and TPS

Although DACA and TPS are two distinct forms of immigration relief, they have some things in common:

- i. both grant you a work permit, and
- ii. neither makes you eligible for a green card or citizenship (though if you are eligible for another way to get a green card – like a U Visa, T Visa, asylum, an immediate relative, etc. – you can possibly get a green card that way).

At the time of this Guide’s publication, it is uncertain how long DACA or TPS will continue. We have created this Guide keeping in mind that people may lose these forms of relief in the future.

If you are currently in the U.S. on a visa (such as a student F-1 visa, tourist B-1/B-2 visa, or a worker H-2B visa), this Guide is less relevant to you. Visas have very specific rules (which might include not working in the U.S.), and if you break those rules, your current status and/or future path to status could be jeopardized. You should consult an immigration lawyer about how best to preserve your current status or chance at future status. If you’re in college, there might be an international services center at your school that could help you.

In this Guide, we focus on two different kinds of work including:

- working for an existing business, and
- working for yourself as an entrepreneur.

There are many options available in both categories, and there are many resources in New York City to help you get started. This goes for both people who think they might be able to get work authorization one day and those who don't.



We should be clear that nothing in this Guide should be construed as business or legal advice.

Things like how much risk a business involves, the legal requirements for starting certain businesses, or whether you are authorized to work in the United States are best answered by consulting a business or immigration expert. There are organizations listed in this Guide that can help you work through more specific questions you might have—including whether the information in this Guide (which is current as of May 2019) is still applicable

This Guide is not focused on traditional immigration advice.

For example, we won't go into the details of how to get a green card if you don't have one because immigration law depends on the specifics of a person's circumstances. New York City has a robust group of legal service providers and you should speak to an immigration lawyer if you're worried about your status. You can contact [ActionNYC¹](#) to get in contact with immigration legal services providers for free. Even if a lawyer cannot take your case, it might be helpful to understand best what your immigration options are.

¹ <https://www1.nyc.gov/site/actionnyc/index.page>.

How this Guide is Set Up

There are four main parts to this guide:

1.

Introduction

To help you understand the material in the Guide, we have a few pages to get you started:

- About this Guide & its set up
- Glossary
- An explanation of various tax and employment forms
- An introduction to a few non-citizens



2.

Preparing to be a Non-Citizen Entrepreneur

Maybe you're not quite ready to start your own business, or maybe you'd like to work in both traditional and non-traditional work settings. Either way, here you will find some resources related to:

- Figuring out which forms of ID you can get and carry with you
- ITINs, Social Security Numbers, and when/how to use either
- Opening a credit union/bank account
- Getting work experience and making connections



3.

Working as a Non-Citizen Entrepreneur

Starting a business requires a lot of work and attention to detail (including the details of many rules and regulations!). Here, we want to give you a general idea of the process, what to think about, and which resources can help you get started. We will focus on:

- Creating a business plan
- Getting familiar with different business structures
- The practical issues of starting a business (things like permits, licenses, taxes, etc.)
- Hiring people to work for you

4.

Appendices

Here you will find:

- Resources specific to worker co-operatives
- Your rights as an employee
- Your rights as an independent contractor
- A list of business registration forms needed to form different kinds of businesses

GLOSSARY

Adjustment of Status

The process of changing your status from not a lawful permanent resident (LPR or green card-holder) to a lawful permanent resident (see “Lawful Permanent Resident (LPR)” below). Many of the immigration considerations in this Guide are related to how different decisions around work impact a person’s ability to adjust their status in the future.

Consulate

Consulates provide services to citizens of foreign countries who are living in another country; these services might include helping their citizens get passports or consular IDs. There are many consulates of foreign countries in the U.S. and in New York City. (Consulates are similar to embassies, except that an embassy is the headquarters for a country’s ambassador. Each foreign country only has one embassy in the U.S., but there can be many consulates for a country across different U.S. states.) You can search for the New York consulate of your country of origin by trying the site provided on this [list of](#)

[consulates in NY](#)². Once you navigate to a consulate’s website, look for a link to “consular services”, “consular identification”, “matrícula consular”, “carte consulaire”, or something similar. The consulate’s website may provide specific information about how to make an appointment and what to bring. If not, you can try calling the consulate. The Mexican Consulate in particular has a program called “[Consulate on Wheels/Consulados Sobre Ruedas](#)”³ that is meant to help people get Mexican consular IDs, passports, and birth certificates in different parts of New York, New Jersey, and Connecticut. However, you will need to make an appointment. (See Forms of Identification, page 32.)

Credit union

A credit union is a non-profit that provides financial services similar to banks, such as offering loans and holding deposits. However, credit unions are different from both banks and other non-profits because the members of the credit union are also owners, and the members elect the board of directors that makes bigger decisions about the credit union. Additionally, credit unions usually place emphasis on financial education for members. For more information, visit: <https://www.mycreditunion.gov/about-credit-unions/credit-union-different-than-a-bank>. (See Opening a Credit Union / Bank Account, page 48.)

Department of Homeland Security (DHS)

This department of the U.S. federal government includes a few agencies, including Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and United States

² <https://www.embassypages.com/city/newyork>

³ <https://consulmex.sre.gob.mx/nuevayork/index.php/en/consulate-on-wheels>

Citizenship and Immigration Services (USCIS). Among other things, ICE is responsible for workplace raids and putting people in deportation proceedings, whereas USCIS is responsible for processing immigration applications (such as DACA, TPS, and adjustment of status applications). These DHS agencies should be distinguished from the Internal Revenue Service (IRS), which is responsible for collecting taxes. It is both impractical and illegal for the IRS to share taxpayer information with anyone in DHS except when required in circumstances like a non-tax crime.⁴

Employee

An employee is someone who works for an employer (usually a business or an individual) for wages or a salary. There are many definitions of an employee. These definitions can vary depending on the context. Employee can mean one thing under immigration law, another thing for tax law, and yet another for employment law. (See Working as an Employee, page 52.)

Employer Identification Number (EIN)

This number, also known as a Federal Tax Identification Number, is a tax number used to identify a business. Use this [IRS questionnaire](#)⁵ if you'd like to figure out if your business needs an EIN. EIN's can be helpful even for independent contractors as they can add legitimacy to a business and help it access business bank accounts and business loans. For more information, visit: <https://www.fundera.com/blog/benefits-of-getting-an-ein>.

⁴ The Internal Revenue Code (IRC) 26 U.S.C. § 6103 restricts both the IRS and the SSA from sharing information with the Department of Homeland Security (DHS).

⁵ <https://www.irs.gov/businesses/small-businesses-self-employed/do-you-need-an-ein>

Freelancing

This is a form of work where a person is self-employed and provides services to a variety of people. Freelancers choose which projects to take on and are responsible for making tax payments in a way that traditional employees are not: for traditional employees, employers contribute part of Social Security and Medicare payments, but for freelancers, those who hire them do not contribute to those payments. Freelancing is a term that is often used to refer to and overlaps with the employment concept of “Independent Contractor” below. (See Working as an Independent Contractor or Freelance Worker, page 59).

Green card

See “Lawful Permanent Resident (LPR or green-card holder)” below.

IDNYC

This is a free form of identification that is available for NYC residents. As a form of ID given by the city government, it is not a federal document, and IDNYC does not give people work authorization. The policymakers who created this initiative wanted to create a form of ID for New Yorkers who traditionally had trouble getting government-issued IDs, including people who are undocumented. However, many New Yorkers with a variety of legal statuses have IDNYC because it provides many benefits: it is accepted as a form of ID at [many banks](#),⁶ is a form of ID recognized by the NYC Police Department and other city agencies, and allows free one-year membership at [many museums](#).⁷ The City does not keep the documents it uses to verify the identity and residence of card-holders or share this information with

⁶ <https://www1.nyc.gov/site/idnyc/benefits/banks-and-credit-unions.page>

⁷ <https://www1.nyc.gov/site/idnyc/benefits/museums-and-cultural-institutions.page>

other government agencies. That said, immigrants' rights groups are monitoring recent news that IDNYC might now include a chip to help streamline financial services but could also present security and privacy problems for card-holders. If this proposal passes, undocumented immigrants may want to opt for obtaining a different form of ID. You can check the [New Economy Project](#) for developing news on this topic.

Immigration consequences

Immigration laws are complicated, and for those who break them, there are a wide variety of immigration consequences: from not being eligible for a particular status (like lawful permanent residence) to being deported. That said, violating immigration laws (like working without authorization) are considered *civil* violations in the U.S. – not *criminal* violations. So, if you work without authorization, you might not later be eligible for a green card, but you will not face jail time or other criminal penalties for this work. Criminal sanctions on unauthorized employment in the U.S. are instead directed at employers, who could face criminal penalties (like fines and jail time) for hiring unauthorized workers.

Immigration status (also called legal status)

U.S. immigration laws allow for statuses like U.S. citizen, lawful permanent resident, visa-holders, and TPS. Each of these come with different rights and responsibilities. Some people are said to have no status in the U.S.: that is, they are not currently here on a valid visa and are neither citizens nor lawful permanent residents.

Independent Contractor

An independent contractor is a person or business that contracts to do work for another person or business as a *non-employee*. As a result, independent contractors have to pay their own Social Security,

Medicare, and other taxes, but they maintain more independence and control over when and how their work is done. Note that this is a concept used mostly to describe employment relationships. If you're talking in tax or business terms, an independent contractor might be called a "sole proprietor", which also describes a single-person business. This term has significant overlap with the term "freelancing" (see above). (See *also* Working as an Independent Contractor or Freelance Worker, page 59.)

Internship

Internships are opportunities to get work experience within a workplace. Sometimes these are paid, but non-profits especially are allowed to offer unpaid internships (which is similar to volunteering but usually offers more formalized training or school credit). If an unpaid intern is actually serving as or taking the place of a regular employee, they might be considered an employee – which would entitle them to minimum wage and other protections according to the [Department of Labor](#).⁸ While this might be beneficial for unpaid interns hoping to get paid, this could raise complications for unpaid interns without work authorization because companies are required to verify the work authorization of these intern-employees by submitting an I-9. (See Unpaid Internships, Volunteering, & School Credit, page 65.)

ITIN (Individual Taxpayer Identification Number)

Most people residing in the U.S. are required to pay taxes, whether or not they have legal status in the U.S. The IRS' [Substantial Presence Test](#)⁹ can help you figure out if, as a non-citizen, you should be paying taxes in the U.S. Many people use Social Security Numbers to file

⁸ <https://www.dol.gov/whd/regs/compliance/whdfs71.htm>

⁹ <https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>

their taxes, but the IRS also issues ITINs for people who cannot get Social Security Numbers so they can file taxes as well. People can also use ITINs to fill out W-9's (which are the tax forms that are given to independent contractors so those hiring them can get their correct information.) (See *Paying Taxes: ITINS & Social Security Numbers*, page 38.)

Lawful permanent resident (LPR or green-card holder)

These are non-citizens who are allowed to live and work permanently in the U.S. They are not U.S. citizens and remain citizens of their country of origin; additionally, they are subject to deportation for different reasons which include criminal convictions, voting, and claiming U.S. citizenship. This is a permanent status: that means that even if a person's physical card expires (and they need to renew it), their status as an LPR remains.

Legal status

See "Immigration status (also called legal status)" above.

Liability

A liability is an obligation or something that you owe to somebody else. These can be financial obligations, like debt, or legal obligations, like a contract. (See *Choosing a Business Structure*, page 73.)

Non-citizen

This includes a variety of people, such as people who currently do not have and never have had legal status in the U.S. because they crossed the border into the U.S. without being stopped by Border Patrol; people who came on a visa but overstayed it; people who have a status like DACA or TPS; people who are lawful permanent residents; and people who are here on visas like F-1 student visas or B-1/B-2 tourist

visas. Please note that this Guide is not for those here on specific visas, as visas have specific rules which, if not followed, can jeopardize your current *and future legal status* in the U.S.

Severance pay

When a worker leaves the job (willingly or unwillingly), the company must pay them any wages that the worker already earned. Additionally, the company has to pay the worker reimbursement for any of the following, if they were promised: unused vacation time, sick time, holidays and compensation for expenses, medical bills, or bonuses. (For more information, check out New York Department of Labor's explanation of [Unpaid/Withheld Wages or Wage Supplements/Fringe Benefits](#).¹⁰) However, a company may also give workers *severance pay*, which could be additional payment or other benefits. You can negotiate severance pay with the person or business you work for.

Self-employed

A person is self-employed if they carry on business for themselves (full or part-time). This could mean that they are an independent contractor/sole proprietor, a member of a partnership or anyone else who finds their own work/has a business. People who are self-employed have specific tax requirements; a good place to start learning about these requirements is the IRS [Self-Employed Individuals Tax Center](#).¹¹ You can also visit tax preparers to help you file. (See Tax Preparation Support, page 101.)

¹⁰ <https://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>

¹¹ <https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center>

Social Security benefits

Social Security provides certain people with a source of income when they retire or become disabled; when they die, their dependents (like their spouse, children, or parents) can also get benefits. Everyone who pays income taxes (including those who do not have a Social Security Number) has a portion taken out for “Social Security”: the government disburses this money to people who are currently eligible to get these benefits. However, only those with Social Security Numbers (and their dependents) are able to collect Social Security benefits when they retire, become disabled, or pass away. (See *Paying Taxes: ITINS & Social Security Numbers*, page 38.)

Social Security Number

This is a nine-digit number issued to U.S. citizens, permanent residents, and temporary (working) residents by the Social Security Administration (SSA). This number is used to identify and accurately record covered wages or self-employment earnings. People also use Social Security Numbers to collect Social Security benefits and obtain other government services. (See *Paying Taxes: ITINS & Social Security Numbers*, page 38.)

Tax preparer

There are many IRS- certified tax preparers that can help you fill out your taxes for free if you make less than \$55,000. If you make more than \$55,000 but less than \$66,000, you can visit a free tax preparation site to fill out your taxes online but with the assistance of a certified tax preparer. (See *Tax Preparation Support*, page 101.)

Tax return

These are forms that people must fill out each year and file with the Internal Revenue Service (IRS). With these forms, the government figures out how much you made and how much you owed in taxes over the course of the year. If you have already paid more taxes than you should have based on your income (which occurs for many people), you get money back (a tax refund). However, if you paid less than what you owe for the year, you have to pay money. All of this must be done by April 15 unless you receive an extension. You can fill out taxes using a tax preparer or a number of websites.

Undocumented

A person who does not currently have legal authorization to be in the United States. This could be because they came to the U.S. without a visa, or perhaps they came with a visa but then fell out of status by not following the visa's rules or terms (for example, by overstaying the visa).

Work Permit (also known as Employment Authorization Document or work authorization)

Non-citizens are able to get work permits through different statuses; for some statuses, work authorization is given automatically, and for others, people must apply separately once they are approved for the status. Either way, with a work permit, they can apply for a Social Security number. Please note that refugees and asylees have work permits that do not expire.¹²

¹² USCIS Instructions for Form I-9, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (valid through Aug. 31, 2019) at 3, available for download at <https://www.uscis.gov/i-9>



INFORMATION ABOUT TAX AND EMPLOYMENT FORMS

Throughout this Guide, we will be referencing different tax forms. Some people are hesitant to fill out tax forms as they would like to avoid any contact with the federal government given their immigration status. It is important to note that while the IRS is allowed to share information with DHS during criminal investigations, the IRS and DHS are two separate agencies that do not ordinarily share information. Additionally, the IRS also has a strong interest in maintaining tax-payers' information: if people heard the IRS was sharing information with DHS, fewer people would pay taxes. Here is a chart to familiarize yourself with some of them. Please note that taxes are really complicated, and we highly recommend working with an experienced tax preparer or accountant (*See page 101*) to do your personal and business taxes.

	Name of tax form	Purpose of filling out the form	Is this form sent to IRS?	Who should fill out the form
Employees	I-9	Employers must fill out this form for all employees.	No; employers just keep them on file (for a specific amount of time ¹³) in case they are audited for I-9 forms.	Employers who hire and pay employees. Those who work with independent contractors and volunteers do not need to fill out an I-9 for these individuals. ¹⁴
	W-4	This form is used by employees when they start a new job. The form tells the employers how much the employees would like withheld from their wages and sent directly to the government as part of their income tax payments. Depending on how much is withheld, the employee will owe more or less in income taxes at the end of the year.	Yes.	Employees.
	W-2	This form is used by employers to report each employee's wages and amount of tax withheld from their paycheck each year.	The employer sends this form to each employee and to the IRS.	Employers with employees. Employers do not need to fill this out for independent contractors.

¹³ <https://www.uscis.gov/i-9-central/retain-store-form-i-9/retaining-form-i-9>

¹⁴ USCIS Instructions for Form I-9, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (valid through Aug. 31, 2019) at 1.

¹⁵ *Id.* at 2. Also note that if the government finds out that you are working under a false Social Security Number, there can be criminal and immigration consequences.

¹⁶ *Id.* at 6. ("Your employer is responsible for ensuring all parts of Form I-9 are properly completed and is subject to penalties under federal law if the form is not completed correctly.")

What information will be disclosed	Other things to keep in mind
<p>Employees are not required to enter their Social Security Number on the form¹⁵, but employees are also required to submit certain documents establishing their identity and valid work authorization to the employer for inspection. The employer need not keep copies of the documents.</p>	<ul style="list-style-type: none"> ▪ If an I-9 isn't filled out, the employer is penalized and not the employee.¹⁶ ▪ Employees <u>are</u> subject to criminal and immigration consequences if they check one of the boxes in Section 1 indicating that they are a U.S. citizen, national, lawful permanent resident or "alien authorized to work" and they are not.
<p>Your name, address, Social Security Number.</p>	<ul style="list-style-type: none"> ▪ You might consider completing a new W-4 each year or when your personal or financial situation changes.
<p>Employers break down the money an employee earned, including:</p> <ul style="list-style-type: none"> ▪ the employees' total earnings ▪ the amount withheld for federal and state income tax ▪ the amount withheld for Social Security tax ▪ how much the employee earned in tips 	<ul style="list-style-type: none"> ▪ By January 31, employers are required to send each employee a W-2 for the previous year. (For example, by Jan. 31, 2019, all employees should have received their W-2 covering Jan. 1, 2018- Dec. 31, 2018.) ▪ These forms help employees fill out their income taxes.

Independent Contractors

	Name of tax form	Purpose of filling out the form	Is this form sent to IRS?	Who should fill out the form
	W-7	To get an ITIN so that you can: <ul style="list-style-type: none"> - pay taxes - fill out a Form SS-4 (see below) - open a bank account - get insurance 	Yes.	People who must pay taxes in the US but who are not eligible to get a Social Security Number. To see if you need to pay taxes in the US, take the IRS' Substantial Presence Test¹⁷ .
	W-9	People who pay independent contractors or businesses may request a W-9 form from the independent contractor or business so the requester can get a correct Social Security Number, ITIN or EIN for the independent contractor/business. ¹⁹	The requester uses the Social Security Number, ITIN or EIN they get from the W-9 to fill out a 1099-MISC (see below) or other forms, but the requester does not file the W-9 with the IRS.	It is the responsibility of people paying for work to ask their independent contractors or businesses to fill out a W-9.

¹⁷ <https://www.irs.gov/individuals/international-taxpayers/substantial-presence-test>

¹⁸ See p. 3 of the Instructions for Form W-7: <https://www.irs.gov/pub/irs-pdf/iw7.pdf>.

¹⁹ See Instructions for Requester of Form W-9, p. 2: <https://www.irs.gov/pub/irs-pdf/iw9.pdf>

²⁰ See General Instructions on the Form W-9, p. 4: <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

What information will be disclosed	Other things to keep in mind
<ul style="list-style-type: none"> ▪ Your address, country of citizenship, type of visa (if any), and the date you entered the U.S. ▪ You must also send the originals or certified copies of certain documents proving your foreign status and identity.¹⁸ 	<ul style="list-style-type: none"> ▪ The same places that help you fill out taxes can also help you get an ITIN. ▪ Make sure that the way you write your name on your W-7 matches the way your name is written on the documents you submit to verify your identity and foreign status. ▪ It takes about 7 weeks for the IRS to notify you of your ITIN application status.
<p>Your name, address, business name (if any), tax classification (such as individual, LLC, partnership, etc.), and ITIN/SSN/EIN of you as an individual or that of your business.</p>	<p>For people with ITINs, fill out Part I of the form (Taxpayer Identification Number) by writing your ITIN in the first set of boxes that request a Social Security Number.²⁰</p>

	Name of tax form	Purpose of filling out the form	Is this form sent to IRS?	Who should fill out the form
Independent Contractors	1099-MISC	<p>This Form is used to report to the IRS certain trade or business-related payments²¹ including:</p> <ul style="list-style-type: none"> - Payments made to anyone who is not an employee of the person or business (including independent contractors) who are paid at least \$600 per year²² - Sales payments for consumer goods of at least \$5,000 made from a person or business (except for a retail establishment) 	Yes.	Either those who pay independent contractors at least \$600 per year or those whose sales of consumer goods (other than those to retail establishments) totals at least \$5,000.

²¹ The IRS specifies that only payments “made in the course of your trade or business” need to be reported on Form 1099-MISC. “Personal payments are not reportable. You are engaged in a trade or business if you operate for gain or profit”, and non-profits are considered to be engaged in trade or business for these purposes. See Instructions for Form 1099-MISC, p. 1: <https://www.irs.gov/pub/irs-pdf/i1099msc.pdf>.

²² See Instructions for Form 1099-MISC, *supra*, p. 1. This form is helpful for the IRS because people who hire independent contractors do not pay Medicare or Social Security taxes or withhold income taxes for them. Independent contractors are responsible for making these payments, and the 1099-MISC is a way for the IRS to know how much it should be getting from the independent contractors. See <https://www.investopedia.com/articles/personal-finance/082714/purpose-w9-form.asp>.

²³ See Choosing a Business Structure, page 73.

²⁴ See Instructions for Form 1099- MISC, *supra*, p. 2.

²⁵ See Instructions for Form 1099- MISC, *supra*, p. 5.

²⁶ See Instructions for Form 1099- MISC, *supra*, p. 9.

What information will be disclosed	Other things to keep in mind
<p>The name, address and the Taxpayer Identification (TIN) number of both the person/entity paying and those of the person/entity receiving the payment. The TIN can be a person's Social Security Number, ITIN or EIN.</p>	<ul style="list-style-type: none"> ▪ Payments made to LLCs treated as C or S corporations²³ do not need to be disclosed on 1099-MISC forms, even if they total \$600 or more per year.²⁴ ▪ Those who file a Form 1099-MISC and include you as the "Recipient" must inform you.²⁵ ▪ Expense reimbursements paid by nonprofits to their volunteers are not reported on 1099-MISC.²⁶

	Name of tax form	Purpose of filling out the form	Is this form sent to IRS?	Who should fill out the form
Businesses	SS-4	This form is used to apply for an EIN (See page 21). Many business organizations, including sole proprietors, ²⁷ can apply for an Employer Identification Number (EIN). You will need an EIN number if you hire employees.	Yes.	Those who operate businesses or have employees, among others. ²⁸

²⁷ See Instructions for Form SS-4, p. 1: <https://www.irs.gov/pub/irs-pdf/iss4.pdf>. Additionally, EIN's may also be helpful in reassuring those hiring you that you are an independent contractor and to get a business bank account (which help you get business loans). See <https://www.fundera.com/blog/benefits-of-getting-an-ein>.

²⁸ See "Do you Need an EIN?": <https://www.irs.gov/businesses/small-businesses-self-employed/do-you-need-an-ein>

²⁹ For a fuller definition of "responsible party", see Instructions for Form SS-4, p. 3: <https://www.irs.gov/pub/irs-pdf/iss4.pdf>.

³⁰ See Instructions for Form SS-4, *supra*, p. 4.

³¹ See Form SS-4, part 9a (requiring Social Security Number of a person who has passed away if EIN is for the purposes of their estate). Although "Sole Proprietorship" also requests a Social Security Number, [Instructions for Form SS-4](#) on p. 3 specifies that an ITIN may be entered here.

What information will be disclosed	Other things to keep in mind
<p>Among other things, the name of your business as it appears on its charter or other legal document, the business address and the name and Social Security Number/ITIN/EIN of the “responsible party” (person who controls the entity)²⁹.</p>	<p>The SS-4 allows for use of an ITIN everywhere a Social Security Number is asked for with the potential exception of those who employ others to provide services in their household³⁰ and estates of people who have died.³¹</p>

INTRODUCING: A FEW NON-CITIZENS

This Guide revolves around four fictional young adults. Some of them might want to apply for a green card, while others don't see that as a possibility right now. Either way, we hope that the decision-making these characters engage in throughout this Guide will be illuminating.

Aaditya

Aaditya is a 20-year old man; he lives in the Bronx. He came to the U.S. three years ago after he and a cousin crossed the border. Aaditya has been working in construction for several years, and he would like to continue in this work. For now, he wants to keep working for the companies he has worked for in the past and maybe pick up a few jobs doing handiwork on the weekends.

Hyemoon

Hyemoon is a 25-year old woman; she lives in Queens. She and her mother came to the United States on tourist visas when she was 10, and she has lived in the U.S. ever since. She applied for and received DACA in 2012, the same year she graduated from high school. A few years ago, Hyemoon sold marijuana to an undercover cop. She took a plea to possession of drugs and never served time in jail. She was worried that she would be put in deportation proceedings, but this has not happened. Once her DACA expired, she consulted with an attorney about renewing it, and he told her that it might not be the best idea. She knows, though, that it is important for her to see an attorney about how she can best position herself to remain in the U.S. She currently works in a restaurant.

Jean

Jean is a 27-year old man who is transgender; he lives in Brooklyn.

He came to the U.S. when he was 5 years old. He did not have legal status here for several years, but he applied for and received TPS in 2011. He has renewed it during each renewal period, but he is worried about the current administration's stance on TPS. Jean graduated high school and college, and he works as a software consultant.

Maribel

Maribel is a 19-year old woman.

She and her family came to the U.S. with tourist visas when she was 2 years old, and they have lived here ever since. Maribel applied for and received DACA when she was 15 years old. Although she currently has DACA and has renewed it, she is worried about the current administration's threats to terminate DACA. Whatever happens, she wants to make sure that she is prepared and able to keep pursuing her goal of becoming a graphic designer. She is currently in college and is employed on-campus. She has worked for a few other companies on the side doing freelance graphic design work. She wants to keep working in this field—whether that is through freelance work, teaching kids, or starting her own business.

PREPARING TO BE A NON-CITIZEN ENTREPRENEUR

FORMS OF IDENTIFICATION

We all need identification for a variety of work and non-work activities.

New York State has recently made important strides towards helping undocumented New Yorkers access state driver's licenses. As of the writing of this Guide, this amazing advocacy effort is still underway; for more up-to-date information, please contact YLC (info@nysylc.org, www.nysylc.org, or @NYSYLC for Twitter/Facebook/Instagram).

But even apart from driver's licenses, there are a variety of ID's you might have or can currently get whether or not you have a work permit:

- A birth certificate*
- An IDNYC, which you can apply for at different [enrollment centers](#)³²
- A consular ID, for which you can contact the NYC office of the [consulate](#) of your country of citizenship*
- A passport, for which you should also contact the consulate of your country of citizenship*

³² <https://www1.nyc.gov/site/idnyc/card/locations.page>



- A high school or university ID
 - A GED (also known as TASC or HSE, high school equivalency) certificate or high school diploma
 - An ID for Child Health Plus or any other form of health insurance
 - An employee ID
 - A printed pay stub with your name on it
 - A utility bill with your name and address
 - A bank statement
 - An ATM card
- * It can be dangerous for undocumented people to carry around forms of ID that identify their country of citizenship. This is because, if they are picked up by immigration authorities (the Department of Homeland Security, or DHS) and put into deportation proceedings, DHS will need to prove that they are not a citizen of the U.S. If the person is carrying proof that they are a citizen of another country, DHS may be able to use that proof against them (though hopefully their immigration lawyer can argue that DHS cannot lawfully use this evidence). For this reason, some people decide not to carry around the starred (*) forms of ID above.

A few notes about carrying forms of ID:

- Regardless of what forms of ID they do or don't have, many people decide not to carry around every form of ID with them at all times. They worry that if they lost their wallet, they would lose every way they have of identifying themselves. So, they prefer to keep some forms of ID at home.
- Every non-citizen 18 years or older is required by law to carry with them whatever proof of their immigration status the U.S. government has given them.³³ So that means for people with DACA or TPS, that they carry their work permits with them, and for people with lawful permanent residence, that they carry their green cards with them. (However, for people to whom the U.S. government has never given any immigration status or documents --like undocumented immigrants -- there is no legal requirement that they carry around identity documents issued by another country, like a foreign passport.) Many people do not want to carry these cards around with them because they can be really difficult and expensive to replace. However, you should know that although it is rare for people to be prosecuted for these offenses, they are prosecuted sometimes.
- Many people try to get as many kinds of these forms of ID as they can—that way, if they are not able to use one form, they can try another form.

³³ See INA § 264(e) and 8 CFR § 264.1(b).

Here are the forms of ID our characters have:

Aaditya

As someone who immigrated here at almost 18 without much family support, Aaditya was not able to attend high school in the U.S. So, he does not have a school ID. Additionally, because he does not have legal status in the U.S. (or any way of getting it right now), he also does not have a Social Security Number, a driver's license, or health insurance. He was excited to learn about IDNYC because he learned he could get it with his passport, birth certificate, and utility bill. Aaditya knows the City still has his name, address, and photo, but given that the City isn't keeping copies of his identity documents (just verifying that they're valid), he decided the risk was worth it for him. So, he got his IDNYC and carries that with him everywhere. He also occasionally carries his passport—especially if he is working in Long Island or White Plains (where IDNYC, a municipal ID, is less useful) or if he needs to purchase alcohol. But he heard that carrying it around all the time could be risky, so he tries to keep his passport at home.

Hyemoon

Because Hyemoon got DACA when she was 18, she had a work permit for several years. However, after she decided not to renew her DACA following her criminal conviction, her DACA and work permit expired. She received a driver's license at 20, but the driver's license expired at the same time as her DACA. Without a currently valid work permit, she has not been able to renew her driver's license either. However, Hyemoon attended high school in the U.S., so she carries her old high school ID. When she needs to prove her identity, she carries her high school diploma. But she normally leaves the diploma at home to keep it safe. She also had Child Health Plus until she was 19, so she carries that card with her as well.

Jean

With TPS, Jean was able to get a work permit. With a work permit, he applied for a Social Security Number, and when he was 16, he got a driver's license. Because he has renewed his TPS during each renewal period, he has also been able to renew his driver's license. However, when Jean transitioned three years ago, he wanted to change his name and gender identity on his documents. So he contacted the [Sylvia Rivera Law Project \(SRLP\)](#),³⁴ who gave him a lot of great information about how to change his name and gender identity on his [immigration documents](#);³⁵ he eventually submitted an application to replace his work permit along with

a fee waiver request. This process required copies of a doctor's letter that affirmed his gender transition (he found a [sample](#)³⁶ on SRLP's website) and a name change order. SRLP also was able to give him [information](#)³⁷ about changing his Social Security Card, New York driver's license, and high school diploma.

³⁴ <https://srlp.org/>; <https://srlp.org/resources/changeid/#immigration>

³⁵ If Jean lived outside of NYC, he could have looked to the National Center for Transgender Equality's Transgender Legal Services Network to find trans-friendly legal support at: <https://transequality.org/issues/resources/trans-legal-services-network-directory>. However, because this list does not necessarily include lawyers with immigration expertise, he would have had to specify to these organizations that he was not a U.S. citizen and verify that he could speak with someone who took into account his immigration status.

³⁶ <https://srlp.org/resources/changeid/#sample>

³⁷ <https://srlp.org/resources/changeid/>

Maribel

Because Maribel has DACA status that is current, she has a work permit, Social Security card, and a driver's license. She knows the law requires her to carry her work permit with her, but she's afraid to lose it. She keeps that at home along with her consular ID. She's also heard it's a bad idea to carry her Social Security card around in case someone gets ahold of it and uses it to steal her identity. So, she just has the number memorized and keeps the card at home. She carries around her driver's license along with her high school ID.



PAYING TAXES: ITINS & SOCIAL SECURITY NUMBERS

Taxes are confusing (and stress-inducing) for a lot of us. Here is some basic information you might want to know.

Do I need to pay taxes?

Almost everyone who works in the U.S. has to pay taxes. That includes people who work without authorization and those who are self-employed. The IRS has a tool, the [Interactive Tax Assistant](#),³⁸ that helps you figure out whether or not you need to pay taxes. Note that those who are self-employed, like independent contractors, generally need to pay taxes on any earnings above \$400, but those who are employees of another person generally only need to pay taxes if they earn over \$12,000. If you are not sure whether you are considered self-employed or an employee of a business, you might want to speak to a tax preparer. (See Tax Preparation Support, page 101.)

³⁸ <https://www.irs.gov/help/ita/do-i-need-to-file-a-tax-return>

What are the consequences of not paying taxes?

Not paying taxes is a crime if you make taxable income, and though it is unclear how often people are prosecuted for this crime, prosecution could have serious criminal and immigration consequences. Additionally, many immigration applications are approved or denied based on the discretion of an immigration officer, and a record of taxes could work in an applicant's favor. If lawmakers decide to create a path to legal status for undocumented people in the future, people hoping to get status might need to prove how long they've been in the U.S., and taxes are one way to do this. Additionally, some people get money *back* when they file taxes – especially those who have children and are eligible for economic supports like the Child Tax Credit—and not filing means they lose out on these supports.

Still, some people who are currently undocumented and don't anticipate being able to get status in the U.S. might feel like paying taxes means they will lose a chunk of each paycheck and never reap the benefits of programs like Social Security. Moreover, some undocumented people are afraid that paying taxes might put them on the government's radar and lead to deportation (though, as explained on the Tax Forms page 21, the IRS has strong incentives to keep taxpayer info confidential, and with few exceptions, it is required to keep taxpayer info confidential by law). For more information, navigate to the section entitled "Why do undocumented immigrants need an ITIN?" on the National Immigration Law Center's (NILC's) [FAQs on ITINs](https://www.nilc.org/issues/taxes/itinfo/).³⁹

³⁹ <https://www.nilc.org/issues/taxes/itinfo/>

How can someone with my status pay taxes?

- *If you are authorized to work in the U.S., you can [apply for a Social Security Number](#) with the Social Security Administration (which is an agency that is separate from DHS)⁴⁰*
- *If you are not authorized to work in the U.S., you can [apply for an ITIN](#) which is a distinct tax processing number issued by the IRS (which is also separate from DHS)⁴¹*

Who can get a work permit in the U.S. (and therefore apply for a Social Security Number)?

People can get a work permit (also called an Employment Authorization Document or work authorization, *see* page 19) once they have certain immigration statuses. For example, you can get work authorization through lawful permanent residency, DACA, TPS, asylum, SIJS, VAWA, U Visas, or T Visas. For certain statuses (like lawful permanent residence, for example), work authorization is granted automatically once you are approved. For others (like Special Immigrant Juvenile Status, for example), people have to apply separately for work authorization. Additionally, people can get work permits after they have applied for some kinds of statuses but before they are approved. If you are unsure whether you are authorized to work as an employee in the U.S., please [contact an immigration attorney](#).⁴²

Once you have work authorization, you can apply for a Social Security Number.

⁴⁰ <https://www.ssa.gov/forms/ss-5.pdf>

⁴¹ <https://www.irs.gov/individuals/individual-taxpayer-identification-number>

⁴² <https://www1.nyc.gov/site/actionnyc/index.page>



What if I have a Social Security card but it says, “VALID FOR WORK ONLY WITH DHS AUTHORIZATION”?

The Social Security Administration (SSA) puts this on the cards of people who have temporary authorization to work from DHS, like people with DACA or TPS. That means that once that status expires or is rescinded (and not replaced by lawful permanent residence), *the person is not able to continue using their Social Security Number as an employee* (since those without work authorization cannot work as employees).

However, they may be able to use their Social Security Number for the following⁴³:

- filling out W-9’s for those who hire them as independent contractors
- starting a business
- filling out income taxes
- education, banking, and housing matters

⁴³ <https://www.nilc.org/issues/daca/about-daca-and-employment/>; <https://www.nilc.org/issues/daca/daca-termination-faq/>

What is an ITIN?

The IRS issues ITINs to individuals who are required to pay taxes but do not have, and are not eligible, to obtain a Social Security Number from the Social Security Administration (SSA). This includes:

- undocumented people
- foreign investors
- people who are here on student visas for a certain amount of time (though remember, folks with any kind of current visa need to verify exactly what they can and cannot do – including work—without jeopardizing their status)
- certain children or spouses of U.S. citizens or lawful permanent residents
- certain children or spouses of people who are in the U.S. on temporary visas

People can use ITIN's for the following purposes:

- filling out W-9's (*see* page 24) for those who hire them as independent contractors
- starting a business
- filling out income taxes
- opening bank accounts
- getting insurance

ITINs are free to get, and many free tax sites (*see* Tax Preparation Support, page 101) can help you apply for one. Avoid tax preparers or notarios who charge hundreds of dollars (or more) to help you get an ITIN.

Isn't it dangerous for undocumented people to submit their personal information to the federal government?

Some undocumented people are nervous to have any contact with the federal government, and so submitting taxes to a federal agency is worrisome to them. But the IRS has strong incentive to not share taxpayers info with DHS –or fewer people would pay taxes—and the IRS generally cannot share taxpayer information with other government agencies (like DHS). However, in certain situations – like nontax criminal investigations—the IRS has to hand over tax information to other agencies.

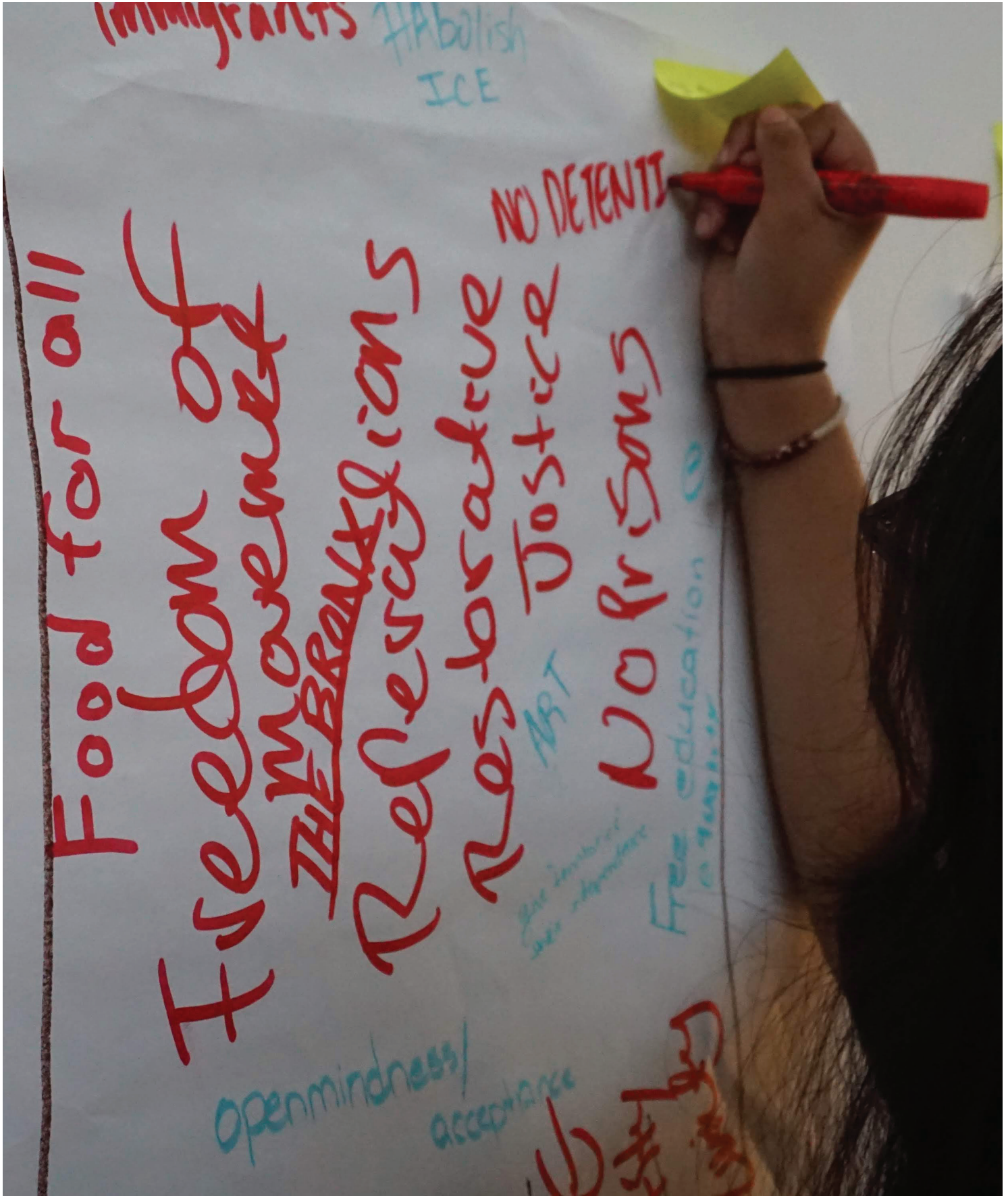
What is this I've heard about ITIN's getting renewed?

To combat fraud, the IRS requires people to renew their ITIN's if they have not used the ITIN in the last three years (so Tax Year 2015, Tax Year 2016 or Tax Year 2017). Additionally, people whose ITINs contain the middle digits of 73, 74, 75, 76, 77, 81 or 82 (e.g. 9NN-73-NNNN) expired on December 31, 2018. The [IRS has published a guide](#)⁴⁴ in English and Spanish about expiring ITINs, and they have also put out on information on [the process of renewing an ITIN](#).⁴⁵ For more information (and hopefully for updates if and when other ITINs expire), visit the [IRS' FAQs on ITIN expiration](#).⁴⁶

⁴⁴ <https://www.irs.gov/pub/irs-pdf/p5259.pdf>

⁴⁵ <https://www.irs.gov/credits-deductions/individuals/how-do-i-renew-my-itin>

⁴⁶ <https://www.irs.gov/individuals/itin-expiration-faqs>



What if I am using or have used a fake Social Security Number to work?

While some people use fake Social Security Numbers when working, there are potentially serious consequences if the government finds out that you have used a fake Social Security Number – even if you just used the Social Security Number to be able to work (and not, for example, for fraud). You could face criminal consequences (like jail time and fines) as well as immigration consequences. For example, marking that you are a U.S. citizen on the I-9 form (which employers must have employees fill out) could make you deportable for making a fake claim to citizenship. Using a fake Social Security Number or claiming citizenship falsely on I-9's or other documents can also lead to future bars to adjusting status (becoming a lawful permanent resident).

If you've worked with a fake Social Security Number in the past, you should [speak to an immigration attorney](#) and consider switching to an ITIN. Especially if you're looking to get legal status in the U.S., you may also want to speak with a tax preparer about options for paying back-owed taxes (potentially an expensive process) that might mitigate any potential consequences. Additionally, CLINIC, an immigrants' rights group, has [recommendations for people who have used a false Social Security Number](#) who then have an opportunity to apply for work authorization.

Here is what our characters decided to do:

Aaditya

Because Aaditya entered the country without Border Patrol or anyone stopping him, and because he does not currently qualify for DACA or another way to get a work permit, he is not able to obtain a Social Security Number. He worked with a fake Social Security Number for the first year he was in the US, but he then heard that this could lead to immigration and criminal consequences. Even though he does not have a way of getting a green card right now, he's hopeful that at some point in the future he might. So, when he heard about ITIN's, he figured the best idea was to obtain one. He now uses his ITIN to fill out W-9s for those who hire him as an independent contractor; those hiring him use his W-9 information to file their own taxes, and Aaditya uses his ITIN to file his own income taxes.

Hyemoon

When Hyemoon was 18, she got DACA. With her work permit, Hyemoon applied for and received a Social Security Number. However, her Social Security card states "VALID FOR WORK ONLY WITH DHS AUTHORIZATION", and Hyemoon's work authorization expired when she did not renew her DACA after she pled guilty to drug possession a few years ago. But because Hyemoon already has a Social Security Number, she is not able to get an ITIN number. She still uses her Social Security Number to file taxes and fill out W-9's for catering jobs she does as an independent contractor.

Jean

All during high school, Jean had done freelancing software jobs for a few years. Occasionally, someone who hired him would ask him to fill out a W-9. Because he only got TPS at age 19, Jean did not have a Social Security Number during those years, but he found out that he could still get an ITIN and use that to fill out W-9s. So, that is what he did. Once he got TPS, Jean obtained work authorization and then applied for a Social Security Number. He then began using his Social Security Number for work purposes, which began to include situations where he was an employee as well as an independent contractor. He wrote to the IRS asking them to combine his tax records under his Social Security Number. If TPS is revoked and Jean's work authorization expires, he will no longer be able to use his Social Security Number to work as an *employee* but can still use this number to file taxes on any consulting work he does as an *independent contractor* and, if he decides to start a consulting business, he can use his Social Security Number to get an Employer Identification Number (See page 12), and register the business.

Maribel

Before receiving DACA, Maribel applied for and obtained an ITIN number. She used this number to fill out W-9's and pay taxes on her work as a freelance artist. DACA allowed her to obtain work authorization and a Social Security Number. After receiving her Social Security Number, she wrote a letter to the IRS asking them to combine her tax records under one identification number. Like Jean, if DACA is terminated, she will no longer be able to use her Social Security Number to work as an *employee* but can still use this number to file taxes and fill out W-9's for work as an *independent contractor*.

OPENING A CREDIT UNION / BANK ACCOUNT

Credit union (See page 11) and bank accounts can be a useful tool to help keep money safe. However, non-citizens often face challenges or have concerns when trying to open up accounts.

Why open a credit union/ bank account?

- Without these institutions, you might have to keep large amounts of cash on hand and use high cost financial services like check cashers, payday lenders and pawn shops. Regardless of your immigration status, credit unions/banks will hold your money (many at lower costs or for free; see below), insure it up to \$250,000 (which means that even if the bank fails, the federal government will make sure you are able to get up to \$250,000 of whatever money was in your bank account) and sometimes help you send money abroad.
- Statements from credit unions and banks provide a useful way of keeping track of what you were paid and when, which is really helpful in many situations such as if you're in a dispute about what you're owed for work.



- Your ATM card and credit union/bank statements can be used as forms of ID.
- Your statements can help you pay taxes.
- A bank account can help you establish a record of financial actions you take in the U.S (also known as your financial history). This can be helpful for buying a home, borrowing money, and starting a business.
- A bank account can help you establish the different places you have lived in the U.S. This residential history is required for some immigration applications.
- You can find lists of immigrant-friendly banks and credit unions on both the [New Economy Project](https://www.neweconomynyc.org/resource/credit-unions/)⁴⁷ and [IDNYC](https://www1.nyc.gov/site/idnyc/benefits/banks-and-credit-unions.page)⁴⁸ websites.

⁴⁷ <https://www.neweconomynyc.org/resource/credit-unions/>

⁴⁸ <https://www1.nyc.gov/site/idnyc/benefits/banks-and-credit-unions.page>

Credit union/ bank accounts worry me because...	... but here's some good news:
I don't know what ID I can show to open an account.	There are plenty of forms of ID that you can use. The links for New Economy Project and IDNYC above list a few credit unions and banks, and the forms of ID they accept.
I don't have a Social Security Number.	Many credit unions and banks will accept an ITIN.
I think they cost a lot to open and maintain.	The credit unions and banks highlighted in the links above offer free/low cost savings and checking accounts, and they only require modest amounts of money to keep them open. In fact, all New York State credit unions and banks must offer a "Basic Banking" account with a max fee of \$3 per month (https://www.dfs.ny.gov/consumer/brbba.htm).
Overdrafts (withdrawing more money than you have in your bank account) and bounced checks (a check that cannot be cashed because your account did not have enough funds).	The credit unions and banks listed in the links above have built-in protections so that overdrafts and bounced checks are less likely.
I don't want to tell them my immigration status.	Credit unions and banks shouldn't be asking you to prove your immigration status. If you think the institution is discriminating against you because you're from another country, you should call the New Economy Project's NYC Financial Justice Hotline ⁴⁹ at 212-925-4929.
I don't know what will happen to my money if I leave the US, either by choice or as a result of immigration proceedings.	No matter what your immigration status is or whether you are deported, the money in your account remains your money. If you have to leave the country, you can talk to your credit union or bank about closing your account or accessing it from abroad. Also, check out this presentation ⁵⁰ from the Democracy at Work Institute and the Lawyers Committee for Civil Rights .

⁴⁹ <https://www.neweconomyinc.org/nychotline/>

⁵⁰ https://institute.coop/sites/default/files/resources/ENGLISH_%20assetprotection_forentrepreneurs.pdf

GETTING EXPERIENCE AND MAKING CONNECTIONS

If you are thinking of starting your own business, you will need clients who will both pay for your services and refer you to other clients. Additionally, you will need experience to get skilled in your area of work. There are a variety of ways you can accomplish both goals:

- 1) working as an employee;
- 2) working as an independent contractor;
- 3) working as an unpaid volunteer/intern;
- and 4) working in a worker's co-op.

1) Working as an Employee

Typically, there are two main categories of workers. These are “*employees*” and “*independent contractors*.”

What is an employee?

While there are many tests to distinguish between these two categories, the *major difference* is that an “employee” usually works for someone like a company, a boss, etc., while an “independent contractor” works for themselves and hires out their services to others. For more information, check out this [explanation](#)⁵¹ from the New York State Department of Labor. It is important to note that the definition of “employee” and “independent contractor” for the purposes of employment and labor law differ from the definitions of these two terms for the purposes of immigration law. For example, as we explore in the next section, someone can be considered “hired for the purposes of employment” under immigration law but still be an independent contractor under employment and labor laws.

⁵¹ <https://labor.ny.gov/ui/dande/ic.shtm>

Who can be hired as an employee?

In order to be hired *as an employee*, you must have some form of valid work authorization (See page 19). Employers are required to verify your work authorization when you start a new job by having you fill out an I-9 form (though not all do this). This form requires you to have valid work authorization. Employers can face penalties if they hire employees who do not have work authorization.⁵² Additionally, you can face criminal penalties or bars to future adjustment of status if you lie about your Social Security Number, immigration status, or citizenship status when filling out an I-9 form; some people inadvertently do this by checking that they are a U.S. citizen, lawful permanent resident or something else they are not on the I-9 form.

What is the benefit of working as an employee as opposed to an independent contractor?

Employees (including undocumented employees) often have more workplace protections than independent contractors. See Appendix B and Appendix C, pages 114-116 . Some people might also want to avoid the challenges of owning and operating their own business and so decide to work for someone else as an employee instead. This might especially be an attractive option for those who do not anticipate being able to get a green card – though it is hard to tell what might happen in the future that could open a path to legal status.

⁵² INA §274A

Can I continue to work as an employee after DACA is terminated?

With uncertainty surrounding the future of DACA and TPS, many people are concerned about what will happen if and when DACA is terminated. Even if DACA is terminated, those with DACA are allowed to work until their work authorization expires. Your employer does not have the right to fire you, put you on leave, or change your working conditions (like your hours of work or position at work) until after your work permit has expired. But if your expiration date is nearing, your employer may ask you for an updated work permit.

Can I continue to work as an employee after my work authorization expires?

If your work authorization expires, your Social Security card says, “VALID FOR WORK ONLY WITH DHS AUTHORIZATION”, *and* you continue to work as an employee, your employer might be fined or receive other sanctions. (That said, workplace immigration audits are currently not common, especially in small businesses).

Additionally, you might face immigration consequences including being barred from becoming a lawful permanent resident in the future if you continue to work without authorization. However, several exceptions to these bars exist depending on your status and type of adjustment you might be eligible for.⁵³ This area of the law is difficult and every immigration case is different so it is best to [consult an immigration attorney](#)⁵⁴ if your work authorization is about to expire and/or you think you might be eligible to adjust your status in the future.

⁵³ See INA § 245(c)(2), (c)(8), and (k).

⁵⁴ <https://www1.nyc.gov/site/actionnyc/index.page>

So, if I'm not legally allowed to work as an employee, what can I do for work?

If your work authorization expires, you may still be able to obtain work as an independent contractor (*See* page 59), as a worker-owner (*See* 68) in a co-op, or by starting your own business (*See* page 71). These options may not have the same I-9 employment verification requirements that traditional employers must follow. Some DACA and TPS recipients are taking a proactive approach and are working with their current employers to obtain connections and referrals to start their own business in case these programs expire (see below). These options, however, do not come without risk as some immigration judges have ruled that independent contractor work and self-employment business ownership are “unauthorized employment” barring some people from getting a green card (again, several exceptions apply). That being said, the law defines independent contractors and business ownership differently than employment so there is an argument that these should not count as “unauthorized employment.” This is an area of the law that is still developing.

If you would like more information, NILC has a very useful guide on [DACA and employment](#).

If I am currently an employee, what can I do to prepare myself for when my work authorization expires?

People with DACA and TPS might be worried that they could lose their work status soon. If you are in this situation, here are some things you might want to do while you still have work authorization:

- **Get experience:** Working will help you get experience on your resume and make you more marketable. There is, of course, no one way to do this — which is why we have outlined the different options of working as an employee, independent contractor, intern/volunteer or worker-owner in a co-op.
- **Get references:** Ask past and current employers to be your reference when you apply for future freelancing/independent contractor jobs. If they know your current immigration status and you would not like them to share this with anyone you might potentially work with, you can be direct with them that you would prefer they keep this information private. You may also want to ask them for a reference letter that isn't addressed to any specific company or organization so you can use it in multiple contexts. If your current employer knows about your loss of status, they will not legally be allowed to hire you as an independent contractor in the future.
- **Network:** You can ask your employers to introduce you to other people in the field that they may know and again, if you prefer, specify that you'd like to keep your immigration status private. You might also want to consider networking by joining an organization related to your field or taking classes (and getting to know the teachers/professors) in your field.
- **Negotiate severance pay** (See page 17): If you feel like your employer is nervous about keeping you on if you lose your status, you can talk to them about severance pay and see what they can do-- especially if you're a valued employee (that is, you've worked there for some time and/or you have a specific set of skills that the company values).

Here are a few examples.

Aaditya

The first construction company Aaditya worked at in the U.S. had him fill out an I-9 form. They said that the I-9 form was for all employees, and they gave him a number and told him to put it in the “U.S. Social Security Number” box. (Aaditya did not have his own Social Security Number since he has never had legal status in the U.S.). Aaditya used this fake Social Security Number until he realized that this could carry immigration and criminal consequences, but that ITINs were an option for someone like him. He then switched to using an ITIN to fill out paperwork when he changed jobs and was hired by a new construction company as an independent contractor. He used his ITIN to fill out the W-9, independent contractor tax form his new boss gave him. However, his company still told him when to clock in and out every day, paid him regularly, and provided him with most of the tools he needed for his job. At this job, Aaditya was an *employee*. This is important to

Aaditya since he knows that even though he does not have legal status in the U.S., he still has some important workplace protections (See page 114) like minimum wage, overtime, and sick leave.

Hyemoon

Hyemoon has been working in a restaurant since before her DACA status expired. Hyemoon’s boss tells her when to come in and when to leave work every day. Hyemoon’s boss also pays her a regular amount in cash on the same day every two weeks but has never had her fill out an I-9 form. Hyemoon’s boss also provides her with all of the equipment that she needs to do her job. Even though she does not currently have work authorization and did not fill out an I-9, Hyemoon has been hired as an *employee*. While she is still entitled by law to workplace protections (See page 114), she might face greater challenges in enforcing them because she does not have work authorization now.

Jean

Jean works at a software company developing code. When he started, he was asked to fill out an I-9, and he used the Social Security Number he obtained after receiving TPS. He works the same hours every day, is paid a regular paycheck every two weeks, and is provided the equipment and space he needs to do his job. Jean is an *employee*. If TPS is terminated, Jean might continue working as an employee for a bit if his employer does not let him go (again, it is illegal for Jean's employer to continue employing him if Jean does not have valid work authorization, but it is not illegal for Jean to keep working-- although Jean's working without authorization could have immigration consequences for Jean himself). He wants to use this job to make some more connections and gain some more skills before he lets it go.

Maribel

In addition to her on-campus work, Maribel works as a graphic designer with an education start-up. She has a supervisor at the company who gives her feedback, gives her more projects, and ultimately decides if she stays with the start-up or not. If she can't get all of her work done, Maribel isn't able to get anyone else to do it -- she just has to tell her supervisor that she can't complete it. If she has to go off-site to do work for projects, she is compensated for travel. Maribel is an *employee*. Because she currently has DACA and a work permit, Maribel is able to legally continue in this job, but even if her work permit expires, she would like to continue working at this job for as long as she can to make connections. (Working as an employee after her work authorization expires might carry immigration consequences for Maribel if she applies for a green card in the future, but it is not a crime for her to continue working.)

2) Working as an Independent Contractor or Freelance Worker

If you are not legally authorized to work as an employee in the U.S., you may still be able to obtain work as an “independent contractor” or “worker owner.”

What is an independent contractor?

An independent contractor is a self-employed person who contracts out their services to others on their own terms. Independent contractors are able to determine the hours they work, the scope of the services they will provide, and whom they will work with. Again, the New York State Department of Labor provides a useful [guide⁵⁵](#) to distinguish between independent contractors and employees.

⁵⁵ <https://labor.ny.gov/ui/dande/ic.shtm>

Can people without work authorization work as independent contractors?

Unlike employees, independent contractors do not need to fill out an I-9 when they are contracted. Instead, independent contractors are asked to fill out a W-9 which does not require a Social Security Number. Independent contractors can use an ITIN when filling out this form.

This means that people or businesses contracting with independent contractors do not need to verify the independent contractor's immigration status in the same way that employers are required to verify employee's immigration status. However, if the person contracting an independent contractor knows that the independent contractor does not have work authorization, they are required to terminate the contract by law.⁵⁶

What are the immigration consequences of working as an independent contractor?

Like with employees, it is unlawful for a person or business to hire someone, recruit them, or refer them for a fee *if they know* that person is not authorized to work.⁵⁷ This goes for both those who hire employees and those who hire independent contractors; the difference is that those who hire independent contractors are not required to verify the work authorization of independent contractors before they begin working (whereas they *do* for employees). Independent contractors are still required to fill out a W-9, but this form does not require the employer to check the worker's work authorization. The W-9 form is for tax-reporting purposes only, and as we have said before, the IRS has strong incentives to not share taxpayers' information with DHS and legally cannot do so in most situations.

⁵⁶ INA § 274A(a)(2).

⁵⁷ INA § 274A(a)(1).

It is important to note that while it is illegal for people or businesses to hire an independent contractor if they know the independent contractor does not have work authorization, it is not a crime to perform work as an independent contractor without work authorization (though there could be immigration consequences). If you are currently in the U.S. on a tourist, student, or employment-based visa, and work as an independent contractor outside the conditions of your visa, this could serve as a bar to getting a green card in the future. If you are currently without status and think you might be eligible to get a green card in the future, it is still unclear whether independent contract work or other forms of self-employment qualify as “unauthorized employment” for the purposes of getting a green card.⁵⁸ As noted in the previous section, the law defines independent contractors separately from employment so there is an argument that this should not count as “unauthorized employment.” Again, this is an area of the law that is still developing.

⁵⁸ *Wettasinghe v. INS*, 702 F.2d 641 (6th Cir. 1983) (Violation of status where a student purchased ice cream trucks and ice cream, leased them to vendors to sell, and also assisted where needed); *Bhakta v. INS*, 667 F.2d 771 (9th Cir. 1981) (Noncitizen was not engaged in “unauthorized employment” when he owned a motel chain); *Matter of Tong*, 16 I&N Dec. 593 (BIA 1978) (Employment includes self-employment where noncitizen was running his own used car dealership in violation of student status without work authorization).

Here are some examples from our characters:

Aaditya

Aaditya now works for another construction company. As he does not have a Social Security Number (since he has never had legal status in the US), the company had him use his ITIN to sign a W-9 and also had him sign an “independent contractor agreement” stating that he was not an employee. Still, his employer tells him when to clock in and out, provides him with a uniform to use on the job, and told him he was not allowed to perform construction work for other companies. Despite signing an “independent contractor agreement,” Aaditya is in fact an *employee* under New York State and federal labor law, as well as for the purposes of immigration.

Hyemoon

After her criminal conviction, Hyeon did not renew her DACA and currently works off the books as an employee at a restaurant (though, as we stated earlier, her lack of work authorization does not mean she is not an employee in that context). She hopes to one day start her own catering business. On the weekends, Hyemoon has started catering parties and events for friends and local businesses. She supplies her own tools and materials, offers her services to anyone who is interested, works with several clients on a given weekend, receives the full profit or loss from her work, and decides when, where, and whom she works for. She likes the flexibility of being able to set her working conditions and being her own boss. On weekends, Hyemoon is an *independent contractor*.

Jean

In addition to his current job, Jean occasionally provides software and consulting services for friends. These are often one-time tasks such as building a website, checking databases, or analyzing their security software to prevent privacy breaches. Jean determines where, when, and whom he works for and supplies his own tools and materials. Despite signing agreements to not replicate similar work for other companies or share data from one company with another, Jean is free to work with other clients as he chooses. Jean is an *independent contractor*; he uses the Social Security Number he obtained through TPS to fill out his W-9's.

Maribel

Maribel recently signed up on an online platform, IndyContract, that connects artists with businesses for a small fee to do one-off piece work and design tasks. Maribel supplies the tools and materials for her work, offers her services to the public, works with several different clients, has opportunities for profit or loss, and decides when, where, and whom she works for. IndyContract has little to no control over Maribel's work besides collecting a small fee and referring potential clients. Maribel is an *independent contractor*. She uses the Social Security Number she got after receiving DACA to fill out W-9s for this work.

SCHEDULE

THURSDAY	FRIDAY	MURAL DAYS					VALUES
MONSE	EVERYONE	Monday Aug 6	Tuesday Aug 7	Wednesday Aug 8	Thursday Aug 9	Friday Aug 10	<ul style="list-style-type: none"> * Women-led organization * LGBTQ+ inclusive * Undocumented Friendly * Youth-led but Conscious that youth have/are part of families * Everyone can & is here to learn * Connect to Immigration to intersecting issues which include, but are not limited to, racial justice, reproductive and sexual freedom, Religious freedom * We do not further criminalize nor discriminate against our community who have had interactions with police which may have had led to arrests, detention, deportation, etc.
nia	Monse	1 MO	2 2 3 4 5	1 Monse 2 Solangy 3 Eduardo 4 Adrian 5 Argelis	1 Shenelle 2 Yessonia 3 Angel 4 5	1 Johan 2 3 4 5	
m		Aug 13	Aug 14	Aug 15	Aug 16	Aug 17	
		1 2 Berta 3	1 Monse 2 3 4	1 Argelis 2 Solangy 3 KARLA 4 5	1 MO 2 3 4 5	1 2 3 4 5	



3) Unpaid Internships, Volunteering, & School Credit

Unpaid internships, volunteer work, and work done purely for school credit can be a good way to get experience or build connections in a certain industry. These opportunities, however, might not financially be an option for many people, and as the sections above suggest, there are plenty of options outside of unpaid internships. That said, for people who are interested and able to pursue unpaid internships and volunteer opportunities, there are certain factors to keep in mind.

If you are currently in the U.S. on a student, tourist, or employment-based visa, it is important to make sure that any unpaid internship or volunteer opportunity is in compliance with the terms of your visa. Paid internships, internships in which an intern does work that would be done by an employee, or internships that are done with a promise of a paid job at the end of the internship might establish an “employment relationship” in violation of some visas. Similarly, for people who think they might be eligible for adjustment of status (getting a green card) in the future, paid internship opportunities could be considered “unauthorized employment” barring future adjustment of status. In order to avoid this issue, it may help to clearly establish that your internship is unpaid and is tied to a formal education or training requirement.

Here is what our characters might decide to do:

Aaditya

As someone without legal status and with very little family support, money is a priority for Aaditya right now. So, he is not as interested in unpaid internships. However, Aaditya would like to start volunteering more regularly with a local soup kitchen because he has always loved helping people. Additionally, he has heard that if he eventually wants to become a citizen or lawful permanent resident, he will have to show that he is a “good” person to the officer deciding his application, and a record of community service could be helpful in these circumstances. Aaditya currently has no way of getting legal status in the U.S., but he is hopeful that will change

in the future. He is going to keep volunteering because it would be great to do something he loves while also increasing his chances at getting legal status in this country.

Hyemoon

Hyemoon is thinking about attending culinary school, and she knows she will need to do internships as part of this. Since she decided against renewing her DACA, she does not have work authorization currently, and she is not sure whether she will have a valid work permit by the time she is in culinary school. So, her best bet might be to find non-profits⁵⁹ with whom she can do unpaid internships⁶⁰ to fulfill the internship requirements for school.

⁵⁹ For-profit companies may be limited in their ability to offer unpaid internships. See Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act. <https://www.dol.gov/whd/regs/compliance/whdfs71.pdf>

⁶⁰ It does not seem that people or companies who give unpaid internships to workers without authorization have faced sanctions for having “hired” an unauthorized “employee”. As relevant to this point, the Department of Homeland Security defines an employee as “an individual who provides services or labor for an employer *for wages or other remuneration*”. 8 C.F.R. §247a.1(f). The Office of the Chief Administrative Hearing Officer (OCAHO) takes cases involving employers who

Jean

Jean wants to build a solid base of clients who use his tech skills, and to do that, he will need to get as many work assignments as possible. This has been Jean's goal for some time, and as someone with TPS, he has been doing that both as an employee and independent contractor for some time. Jean is worried that TPS could be terminated for many reasons, but in terms of work, he is confident that even once his work authorization expires, he will be able to get independent contractor assignments easily through word-of-mouth, and that many of the people paying him will have no reason to ask or know about his legal status. For that reason, unpaid internships are less his priority right now.

Maribel

In addition to her on-campus employment, Maribel is currently freelancing for a few companies doing graphic design work, and these companies have come to know her well. Most of them know that she currently has DACA, and some of them have a copy of her work permit on file from when she filled out I-9 forms for them. Some of them have even expressed their concern about what she will do if DACA is terminated. Though they are supportive, she is not sure how they would react if she asked for assignments and did not have work authorization. If DACA is terminated, she is considering asking them if she can complete unpaid internships with them and if they wouldn't mind being her references when she applies for independent contractor work with people she doesn't know. She wants to specifically tell them to not mention to new jobs that she was a DACA recipient.

hire people without authorization to work, and a survey of OCAHO cases related to the topic of remuneration reveals that the people who are prosecuted for hiring unauthorized employees are those who pay their workers. See *U.S. v. Leed Construction*, 11 OCAHO 1237 (2014); *U.S. v. Cafe Camino Real, Inc.*, 2 OCAHO 307 (1991); *U.S. v. Dittman*, 1 OCAHO 195 (1990).

4) Working in a Workers' Co-Op

In addition to working as an employee or independent contractor, some non-citizens are joining worker co-operatives (or co-ops). A workers' co-op is a business where workers both own the business (that is, the business belongs to them) and manage it (that is, the workers decide how the business is run and put that into practice). This is different than a traditional business where a small group of managers or directors make all important decisions and might also own the business. Members of a workers' co-op join by investing time and/or money in the co-op and make decisions about how the co-op will be managed. When co-ops make important decisions, each member gets a vote. Workers' co-ops can take on a variety of different forms and business structures (e.g. LLC's, C Corp.'s) as we will discuss in the section on Choosing a Business Structure (See page 73).



Because workers at workers' co-ops both own and manage the business, workers are sometimes considered neither employees nor independent contractors, but are instead considered “worker-owners.” It is important to note that “worker-owner” is not a legal term for the purposes of immigration, employment, corporate, or tax law. Additionally, whether or not a worker-owner is considered an employee depends on a number of factors including how the co-op is actually operated and whether someone else controls or has the right to control their work. In co-ops that are structured and operated in such a way that worker-owners are not considered employees, the workers' co-op is not required to verify the employment authorization of their workers by filing an I-9.

Like with owning any business, workers' co-ops carry risks. In a workers' co-op, this business risk is shared among the worker-owners. Still, there are a variety of reasons that non-citizens join workers' co-ops:

- Noncitizens are often exploited in traditional businesses with regards to their working conditions, pay, schedule, and benefits—all things the employer normally controls. But in worker co-ops, the members control these conditions of work.

- Worker co-ops can serve as a way for people to save money: they require an initial investment, and some or all of that investment can be returned to workers after a specified time (depending on the co-op).
- Worker co-ops also often have the social mission of promoting worker empowerment, and to that end, they often have leadership training and other opportunities to give workers more agency.
- New York City has many resources for people looking to work in or begin workers' co-ops.

Below are a few resources if you're interested in learning more about worker co-ops:

- For a list of upcoming events, resources, and services for existing New York City-based workers' co-ops or for people interested in starting their own workers' co-op, please visit:

NYC Department of Small Business Services' (SBS) Worker Co-operative Business Development Initiative (WCBDI)

<https://www1.nyc.gov/nycbusiness/article/worker-co-operatives>

- For a more complete list of NYC based workers' co-ops, events, trainings, resources, and services to help you connect with existing co-ops or to get information about how to start your own, please refer to the Appendix A (See page 109).

WORKING AS A NON-CITIZEN ENTREPRENEUR

STARTING YOUR OWN BUSINESS: WHICH ROUTE TO TAKE?

So, you're thinking about starting your own business! This section will give you an overview of the process, which includes:

- A. Creating a business plan**
- B. Choosing a business structure**
- C. The nuts and bolts of starting a business**
- D. Hiring people to work for you**

If you're serious about starting a business, it will take a fair amount of planning, paperwork, and learning about the ins and outs of the field you're interested in. Reading this guide is not enough to get your business up and running! Instead, our purposes here are to:

- 1. connect you to the wide range of resources open to NYC residents, and**
- 2. highlight parts of this process that might prove especially important for non-citizens.**

A. Creating a Business Plan

The first step is to come up with a business plan, which is your map to make sure you are able to take your business where you want to go. A good plan will help guide you through each step of starting, managing, and growing your business.

There are several types of business plan formats. The two most common are the following:

A traditional business plan: A traditional business plan is usually very detailed, comprehensive, and takes more time to write. Lenders and investors often request this type of plan. If you are hoping to grow or “scale” your business to attract funding, you may want to consider using this type of plan.

A lean business plan: A lean startup business plan allows you to explain your business quickly and can be useful if you plan to change or refine your business plan in the future.

The U.S. Small Business Administration has both a [tool](#)⁶¹ to help you create a business plan and a [website](#)⁶² to explain further the difference between these concepts. NYC Business also offers an up-to-date list of [courses](#)⁶³ that can help with various aspects of starting a business, including creating a business plan.

Regardless of what kind of business plan you choose, you should include a detailed description of your business, an explanation of how you will manage your business and salaries, how your product or services will be bought or sold, your marketing strategy, how much money you’ll need to get started, and how you will bring in profit.

⁶¹ <https://www.sba.gov/tools/business-plan/1>

⁶² <https://www.sba.gov/business-guide/plan-your-business/write-your-business-plan>

⁶³ <https://www1.nyc.gov/nycbusiness/article/business-courses>

B. Choosing a Business Structure

Choosing the right type of business structure for your business is important for a few reasons:

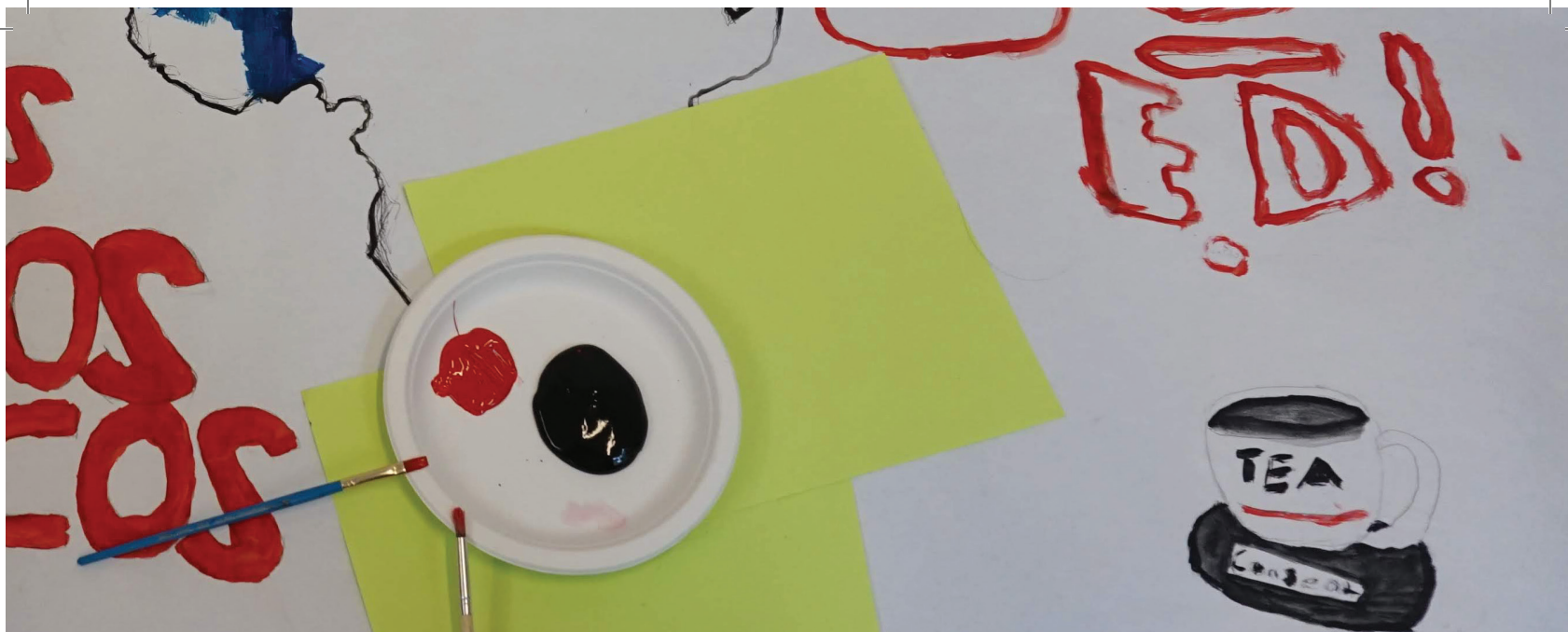
- Each business structure involves different forms and registration. It can be complicated to figure out! **We recommend contacting organizations that help businesses get off the ground (also called “incubators”).** (See General Business Resources, page 90.)
- Each business structure involves different taxes (which you should consult a tax preparer about) based on personal or corporate taxes. At lower income levels (say, below \$100,000), there is not a huge difference in how much you have to pay as an individual versus how much you’d pay as a corporation, but this can change at different income levels.
- Some kinds of business structures carry more liability than others. Whenever you start a business, the business will likely have financial obligations (like debts) and legal obligations (like contracts) to others. To meet these obligations, business owners use the business’ profits. But what if the business profits are not enough to meet the business’ financial obligations? Here are two possible outcomes that could happen:
 - **If the business does not have limited liability:** If the business does not have limited liability and only has personal liability (like a sole proprietorship, for example), banks and creditors could force the business owner to use their personal money and sell their personal property (like their house or car) to pay these debts.



- **If the business does have limited liability:** If a business has limited liability (like an LLC), banks and creditors can only go after the business' assets and cannot force the individual business owners to use their personal funds or assets to pay off the business' debts. That said, the owners will not be able to get back what they initially invested in the business. Business owners can sometimes still be held personally liable for business debts or obligations resulting from particularly bad actions that result in what's called "piercing the corporate veil."

There are several great resources out there to help you navigate the process of figuring out which business structure might work best for you. We recommend speaking with a business specialist, taking a look at [Building Your Business in New York City, A Guide for Immigrant Entrepreneurs⁶⁴](#), and researching various organizations listed on our General Business Resources (See page 90) for more information.

⁶⁴ https://www1.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi_toolkit.pdf



Below is a brief list of some of the different types of business structures you might consider before speaking with a business specialist.⁶⁵ Please note, not all the business structures described below are available to people without legal status in the U.S. While many of the businesses described below allow owners to file taxes using an ITIN, some tax and other filings require a Social Security Number. We have tried to indicate this information using the chart below. Moreover, owning a business does not mean that concerns relating to employees, independent contractors, and volunteers/interns go out the window as most business work closely with these individuals. We recommend consulting with organizations like those listed in our Small Business Legal Support (See page 97) section to navigate these concerns. Additionally, please note that any of the structures described below involving two or more people could be structured as a workers' co-op.

⁶⁵ Some people opt to “incorporate” or form their businesses in Delaware, as opposed to New York, even though their day to day business operations take place in New York. This is because Delaware has very favorable business and tax laws that help protect business owners. If you choose to form your corporation in Delaware, you may still have additional registration, tax, and reporting requirements here in New York that could add another layer of complexity to operating your business.

Types of Business Structures

Here’s a snapshot of the common business structures you may hear about.⁶⁶ Keep in mind that worker co-ops can take the form of any of these except a sole proprietorship.⁶⁷

Business type	Registration with the state?	Who owns the business?	Who invests in the business?	Who manages the business?	V
Sole proprietorship	None	The owner	The owner	The owner	P t i
General partnership	None	The partners (two or more)	The partners	The partners	J e l i d d 1 t i
Limited Liability Company (LLC)	Yes	Members, who can be the workers	Owners	Managers, which could be the members themselves or outside managers	L n

⁶⁶ This [Guide from Harvard](http://clinics.law.harvard.edu/tlc/files/2015/09/TLC-Immigrant-Entrepreneurs-Overview.pdf) provides a comprehensive overview of these structures. See <http://clinics.law.harvard.edu/tlc/files/2015/09/TLC-Immigrant-Entrepreneurs-Overview.pdf>

⁶⁷ <https://www.dos.ny.gov/corps/pdfs/formingbus.pdf>

What kind of liability is there?	How does business grow?	How are taxes paid?	Relevant Tax Forms
Personal liability, but this can be offset by insurance	Owner invests more	Owner only pays income taxes on business profits/losses	Individual <ul style="list-style-type: none"> ▪ Form 1040 (ITIN okay) ▪ Schedule C (ITIN okay)
Joint and personal; each partner is 100% liable for all business debts (so if 2 out of 3 disappear, the 3 rd is 100% responsible), but this can be offset by insurance	Partners invest more	Partners pay income taxes on the business profits/losses (proportionate based on their investment) on their personal tax returns	Business <ul style="list-style-type: none"> ▪ Form 1065 (ITIN okay) ▪ Schedule K-1 (Last 4 digits of SSN, ITIN, or EIN) Individual <ul style="list-style-type: none"> ▪ Form 1040 (ITIN okay) ▪ Schedule E (ITIN okay) ▪ Schedule SE (ITIN okay)
Limited liability for members	Owners invest more	<p>LLCs with two or more members can choose to be taxed as a partnership (pass-through taxation), which is the default, or a corporation</p> <p>An LLC with one member can choose to be taxed as a corporation, partnership, or as part of its owner's tax return (a "disregard entity")</p>	Multi-Member <ul style="list-style-type: none"> ▪ Form 1065 (ITIN okay) ▪ Schedule K-1 (Last 4 digits of SSN, ITIN, or EIN) ▪ Form 1040 (ITIN okay) ▪ Schedule E (ITIN okay) Single Member <ul style="list-style-type: none"> ▪ Form 1040 (ITIN okay) ▪ Schedule C (ITIN okay) ▪ Schedule E (ITIN okay) ▪ Schedule F (ITIN okay)

Business type	Registration with the state?	Who owns the business?	Who invests in the business?	Who manages the business?	V
C Corporation	Yes	Shareholders	Shareholders	Board of directors, management, workers	L S
Non-profit corporation	Yes	No one	Individual donors, the government, and foundations	Board of directors, executive director, management, workers	L a b

⁶⁸ <https://www.irs.gov/charities-non-profits/applying-for-tax-exempt-status>

What kind of liability is there?	How does business grow?	How are taxes paid?	Relevant Tax Forms
Limited liability for shareholders	The corporation issues more shares of stock	<p>Corporations pay state franchise taxes and taxes on income; shareholders pay taxes on income distributed as dividends.</p> <p>Owners who work for the business pay taxes on income received through W-2's, not just as dividends</p>	<p>Business</p> <ul style="list-style-type: none"> ▪ Form 1120 (EIN) <p>Individual Investors</p> <ul style="list-style-type: none"> ▪ Form 1099-DIV ▪ Schedule D (ITIN okay) <p>Owners</p> <ul style="list-style-type: none"> ▪ W-2 (SSN required)
Limited for members and board (or just board if no members)	Whenever individual donors, the government, or foundations donate more	If they meet certain requirements, non-profits can be exempt from federal and state taxes. The IRS⁶⁸ has for more info on applying for tax exempt status.	<p>Business</p> <ul style="list-style-type: none"> ▪ Form 990



Types of Business Structures Defined

1. Sole proprietorship

A sole proprietorship is a business that is owned and run by one person. In a sole proprietorship, there is no difference between the owner and the business: the owner *is* the business. The owner is also personally responsible for all debts and legal issues. There is no registration requirement to start this business in New York State. While the terms “sole proprietor” and “independent contractor” are both used to describe single-person businesses, they are used in different contexts. For example, you may be called a sole proprietor for personal income tax purposes but be called an independent contractor in a business context if you contract out your work to someone else.

✓ **Pros:** Cheapest and easiest business to form. Sole proprietors have complete control over their business. Tax preparation is easier because sole proprietors only pay personal income taxes and not separate business taxes. You can use an ITIN with this business structure.

✗ **Cons:** There is no protection against personal liability for business debts or legal troubles, but this can be offset by insurance. It can be harder to raise money, build business credit, and get loans.



2. General partnerships

A general partnership is a business where two or more people agree to share all of the profits, losses, and obligations of the business.

Like a sole proprietorship, this business does not have to be registered with New York State, and business owners are personally responsible for all debts and legal troubles.

✓ **Pros:** Inexpensive and simple to form. Each owner only pays income taxes on the company's profits (based on how much they invested) and can deduct business losses on their tax returns. An ITIN can be used with this business structure.

✗ **Cons:** Each partner is 100% personally liable for the partnership's debts. So, if two out of three owners disappears, the third is responsible for all the business' debt. This is true regardless of how much this third owner invested in the business—though insurance can help people deal with debt in this situation. Building business credit and getting loans can be difficult for general partnerships.



3. Limited Liability Company (LLC)

A limited liability company is a separate business entity with one or more owners (members) with limited liability. This means that owners are personally protected against business debts or legal troubles. Members can choose to be taxed as either a partnership (also called pass-through taxation), which is the default, or taxed as a corporation. However, if you use an ITIN to register, you may be required to choose pass-through taxation.

- ✓ **Pros:** Each member is protected against personal liability for business debts and legal troubles. Members can choose how they are taxed, and they can report business profits and loss on their individual taxes. An ITIN can be used with this business structure.
- ✗ **Cons:** LLC's cannot issue stock to attract investors if they want to grow their business. The registration can be expensive and complicated.

4. C Corporation⁶⁹

A corporation is a business that is separate and distinct from its owners. It can be taxed; enter into contracts; buy, own, and sell property; sue; and be sued. Investors (called shareholders) get ownership in the business by buying shares of company stock. Shareholders have limited liability against company debt and legal troubles, and shareholders also elect a board of directors to manage the day-to-day operation of the corporation.

✓ **Pros:** Offering stock can be a great way to get people to invest in your business. Additionally, the corporation is what is responsible for the business' debts. None of the shareholders, managers, or employees of the business are personally liable. Transferring ownership is also easier with a C corporation.

✗ **Cons:** The registration process can be somewhat involved, and corporations involve some formalities (board meetings, shareholder meetings, meeting minutes, bylaws, etc.). Additionally, C corporations get "double" taxation: they pay tax on their income, and shareholders pay tax on their dividends. This business structure might not be available to people using an ITIN.

⁶⁹ Additional types of corporations include S Corporations and Benefit Corporations, also known as B Corporations. S Corporations provide some benefits such as avoiding "double" taxation by passing income directly through to shareholders. However, shareholders must be individuals, specific trusts and estates, or certain tax-exempt organizations (501(c)(3)); partnerships, corporations, and nonresident aliens do not qualify as shareholders. B Corporations need to provide some sort of social good. To learn more, visit: <https://bcorporation.net/>.

5. Non-profit corporations: Unlike other businesses (whose primary purpose is to make a profit), non-profits are business entities whose primary purpose is to serve the public. Non-profits can pay their employees reasonable salaries, but they cannot distribute earnings to investors or employees. Instead, any extra profits must be reinvested, given to the public, or given to another non-profit.

✓ **Pros:** Non-profits enjoy certain tax benefits and can get grants from the government and foundations. Directors, members, and employees of a non-profit cannot be held personally liable for the non-profit's debts.

✗ **Cons:** Registration is quite complicated, and unlike other businesses, non-profits cannot participate in political campaigns for (or against) any candidate. Non-profits must also follow strict regulatory and reporting requirements. Additionally, while there is no work authorization requirement to start a non-profit, those without work authorization might not be able to run it as a paid employee.

The NY Department of State also has a useful [breakdown of these structures](#)⁷⁰ that highlights somewhat different information.⁷¹ Additionally, the NY Department of State has a website for [Corporations, LLC's and licenses](#)⁷² that could be helpful to browse through.

⁷⁰ <https://www.dos.ny.gov/corps/pdfs/formingbus.pdf>

⁷¹ Two more types of business structures include Limited Partnerships and Limited Liability Partnerships. These types of business structures are less common among small business owners and, although mentioned briefly below, will not be discussed here in detail.

⁷² <https://www.dos.ny.gov/about/corps-licensing.html>

Here are the business structures that our characters are considering:

Aaditya

As someone without legal status working in construction, Aaditya has most recently been working as an *independent contractor*. However, he would like to eventually start his own business. He has thought about forming a C corporation but heard that this business structure might not be available to undocumented people. He has also heard that forming a *Limited Liability Company* might be a better alternative and provide more protection against possible debt or legal troubles. He has also heard about several existing construction-based *worker co-operatives* that he might be able to join as a worker-owner. He has decided to reach out to NYC Department of Small Business Services' (SBS) Worker Co-operative Business Development Initiative (WCBDI) for more information.

Hyemoon

Because her criminal conviction is currently preventing her from renewing her DACA, Hyemoon does not have work authorization. She has been putting a lot more effort into her work as an *independent contractor/sole proprietor* by running her own catering business on weekends for parties and events. Hyemoon's food is in high demand, and she is thinking of expanding this business. She would like to either hire employees or other independent contractors to help; she knows that she can do this as a sole proprietor but worries she might be personally responsible for any debt or legal troubles if someone gets sick or injured at one of her events. Hyemoon has heard that using a *Limited Liability Company* might help protect against personal debt and legal troubles. She is also an advocate for workers'

rights and believes in democratically run workplaces. She has considered running her business as a *worker co-operative* but realizes the challenges of giving up control over her business to take in others as equal members of a co-operative. She knows that there are organizations in the city that can help her learn more information about this and also guide her regarding the special licenses, permits, registration, insurance, and health and safety requirements she will need to follow. Hyemmoon has decided to reach out to NYC Department of Small Business Services' (SBS) Worker Co-operative Business Development Initiative (WCBDI) to put her in touch with one of these organizations. In the meantime, she is happy to run her catering business as a *sole proprietorship* while she saves money and takes classes on how to expand her business.

Jean

As a TPS-holder with work authorization, Jean is currently working as an employee and has been providing software consulting services for many years. He has been talking to his friends about starting a software consulting business. They have thought about starting a *general partnership* to they share the profits and losses from the business and see if they work well together before considering other business structures. One concern is that all partners are personally liable for debts and obligations. That means if one partner is sued, the other partners might have to pay too. They have also thought about forming a *Limited Partnership* where a limited partner invests in the business and Jean and his friends manage the business as general partners. However, this

would still leave Jean and his friends personally liable for any of the business' debts. A *Limited Liability Partnership* could help resolve some of these issues, but these are only open to certain professions in New York. For this reason, Jean's ultimate goal is to have a *Limited Liability Company* so they are shielded from liability – potentially in the form of a *worker's co-op*. It's important to Jean that him and his friends be on equal footing in the business and make decisions together, and the structure of a worker's co-op seems the best way to do this.

Maribel

As she has DACA and work authorization, Maribel is currently employed on campus and also does freelance work on the side as an *independent contractor*. As long as her DACA is valid, she would like to continue as an *employee* because, especially as someone who is also in college, starting a business might require time she doesn't have. As an employee, she also enjoys certain protections and benefits (See page 114). However, she is open to eventually starting an online business selling her graphic design artwork and clothing. Although some of her friends have expressed interest in going into business with her, she thinks it might be easier to start by selling her artwork herself before inviting in a business partner. For now, she will structure her business as a *sole proprietorship* since this business structure requires no formal business registration with the state.

THE NUTS AND BOLTS OF STARTING YOUR BUSINESS

Starting a business can involve a lot of paperwork and plenty of preparation. Below are some of the questions you will need to consider and/or discuss with a professional when starting your new business. Every business is different.

Questions to Consider when Setting Up Your Business

- What documents can or must I file to register my business with New York State?
- Will I require an Employer Identification Number for tax filing purposes?
- What kinds of licenses, permits, inspections, or certificates will my business require?
- What kinds local, state, and federal taxes will my business be required to pay?
- What kind of insurance will the business require?
- How will I finance my business needs?
- What kind of zoning rules might affect my business location?
- Will I need to sign a lease and what kind of building and fire codes will my business need to comply with?
- What kind of waste disposal or recycling requirements will my business need to follow?
- What kind of signs will I need to display at my business (worker protections, prices, refund policies, licenses, etc.)?
- If I will be hiring people, what kind of additional insurance, training, and employment policies will I need?

If you are considering starting a worker co-op, you might want to look at this [list⁷³](#) of questions that can especially help you prepare for a meeting with a lawyer to discuss this possibility.

⁷³ <https://institute.coop/sites/default/files/resources/28questionsBeforeMeetingLawyer.pdf>



With so many questions, it may seem difficult deciding where to begin. We have a few ideas to help you get started:

General Business Resources

Business Trainings, Classes, and Workshops

Here are some organizations that offer classes and trainings (and by that, we mean everything from workshops to intensive 12-month programs) for people who are starting businesses. Each of these groups has extensive experience working with noncitizen entrepreneurs. For a list of training, classes, and workshops specifically for workers' co-ops, please refer to Appendix A (See page 109).

NYC Business

What they offer: They connect city residents to:

- a [Step by Step tool](#)⁷⁴ (that can be translated into different languages) that will ask you specific questions about the type of business you want to start. Once you do that, the tool will lay out information specific to the type of business you want to form, including state registration documents, licenses, permits and information about health insurance, worker's compensation, zoning, pest control, taxes, payroll and applicable regulations.
- a [compilation of resources](#)⁷⁵ about business education, regulatory assistance, legal assistance, financing assistance, business incentives, recruitment and training, certifications, and selling to government and corporations.
- a series of [quick guides](#)⁷⁶ related to starting, registering, financing, finding a space for, preparing to open, hiring a team, and owning and operating a business.
- a [tool](#)⁷⁷ to figure out if your business qualifies for city, state and federal incentives and tax credits
- a list of [licenses and permits](#)⁷⁸ your business might require
- a network of pro bono lawyers to provide [free legal advice](#)⁷⁹ on business matters and [commercial lease assistance](#)⁸⁰

Contact: <https://www1.nyc.gov/nycbusiness/>

⁷⁴ <https://www1.nyc.gov/nycbusiness/wizard>

⁷⁵ <https://www1.nyc.gov/nycbusiness/topicpage/support-for-businesses>

⁷⁶ <https://www1.nyc.gov/nycbusiness/startabusiness>

⁷⁷ <https://www1.nyc.gov/nycbusiness/ie>

⁷⁸ <https://www1.nyc.gov/nycbusiness/index>

⁷⁹ <https://www1.nyc.gov/nycbusiness/article/get-free-legal-advice>

⁸⁰ <https://www1.nyc.gov/nycbusiness/article/commercial-lease-assistance-program>

NYC Department of Small Business Services

What they offer: They connect city residents to:

- [Business Support Centers](#)⁸¹
- a variety of [business courses](#)⁸²
- a [toolkit](#)⁸³ about planning, launching and growing small businesses geared towards immigrant entrepreneurs in English, Spanish, Chinese, Haitian Creole, Bengali, and other languages
- a series of small business initiatives and support services including [Immigrant Business Services](#)⁸⁴ (regardless of status) and certification programs for [Minority & Women Owned Business Enterprises](#)⁸⁵ (requires permanent resident status).

Contact: <https://www1.nyc.gov/site/sbs/index.page>

Women Entrepreneurs NYC (WE NYC)

What they offer: This organization connects women entrepreneurs to a [variety of resources](#)⁸⁶, including those regarding:

- a business' legal needs
- crowdfunding
- venture capital funding
- mentors
- [guides](#)⁸⁷ regarding how to start different types of businesses, such as restaurants and professional offices

Contact: <https://we.nyc/>

⁸¹ <https://maps.nyc.gov/sbs/>

⁸² <https://www.eventbrite.com/o/nyc-department-of-small-business-services-5423713077>

⁸³ <https://www1.nyc.gov/nycbusiness/article/immigrant-business-initiative>

⁸⁴ <https://www1.nyc.gov/nycbusiness/article/immigrant-business-initiative>

⁸⁵ <https://www1.nyc.gov/nycbusiness/description/minority-and-womenowned-business-enterprise-certification-program-mwbe>

⁸⁶ <https://we.nyc/our-programs/>

⁸⁷ <https://we.nyc/how-to-guides/>

Funding and Loan Resources (that also offer Business Trainings)

Business Outreach Center (BOC) Network

What they offer: BOC's Capital Corp. offers a variety of loans, training and technical assistance. They focus on small businesses and entrepreneurs who are female, immigrant and/or people of color.

Contact: For more information, you can:

- Go to their [website](#)⁸⁸
- Email them at boccapitalcorp@bocnet.org

CAMBA

What they offer: CAMBA is a community organization that provides a variety of services, including small business loans up to \$15,000 to entrepreneurs based in Brooklyn for inventory purchases, start-up costs, working capital, and equipment purchases.

Contact: For more information, you can go to their [website](#)⁸⁹.

⁸⁸ http://www.bocnet.org/boc/micro_loan_program.asp

⁸⁹ <https://www.camba.org/programs/economicdevelopment/smallbusinessservices/smallbusinessloans>



Community Development Credit Unions:

What they offer: These are community-based nonprofits that provide a variety of financial services, including business loans and free financial counseling. Additionally, they function as co-operatives (and like some co-operatives, once a member, you vote for who is on the board of directors and on committees). They aim to provide services especially to low-income New Yorkers, immigrant New Yorkers, and New Yorkers of color.

Contact: The New Economy Project maintains a [list⁹⁰](#) of these credit unions.

⁹⁰ <https://www.neweconomynyc.org/resource/credit-unions/>

Registering & Licensing Your Business

Registering your business with New York State and obtaining the proper licenses to operate in New York City can be a long and complicated process. The licenses you might require vary greatly depending on where and what type of business you are running.

Below is a list of some of the New York State and City agencies you will likely come in contact with when registering and obtaining licenses for your business:

New York City Department of Consumer Affairs Licensing Services

What they offer: This organization provides information about applying for, renewing, and updating NYC business licenses.

Contact: <https://www1.nyc.gov/site/dca/businesses/licenses.page>

New York State Department of State, Division of Corporations, State Records and Uniform Commercial Code

What they offer: They provide information about applying for, renewing, and updating New York State business and occupational licenses.

Contact: <https://www.dos.ny.gov/corps/index.html>

- New York City location: 123 William Street, New York, NY 10038-3804
- Albany location: One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

New York State Department of State, Division of Licensing Services

What they offer: This organization provides information about the various forms you must file in order to register your business with New York State.

Contact: <https://www.dos.ny.gov/licensing/index.html>

- New York City location: 123 William Street, New York, NY 10038-3804
- Albany location: One Commerce Plaza, 99 Washington Ave, Albany, NY 12231-0001

Small Business Legal Support⁹¹

NYC Department of Small Business Services

What they offer: They can connect you with free one-on-one legal services, help you to choose a legal structure for your business, answer questions about your commercial lease or contract, protect your intellectual property, or review with you human resource and employment laws.

Contact: <https://www1.nyc.gov/nycbusiness/article/get-free-legal-advice>

Nonprofit & Small Business Clinic, New York Law School

What they offer: The Nonprofit & Small Business Clinic provides free corporate legal services to nonprofit organizations and small businesses throughout New York City.

Contact:

www.nyls.edu/smallbizclinic

185 West Broadway New York, NY 10013

212-431- 2100 (x4742)

⁹¹ Many of the non-profits and legal clinics listed below have strict eligibility requires such as being a small business or serving some sort of social good. For a list of additional resources or referrals to pro bono or low cost attorneys, visit: <https://www.nycbar.org/get-legal-help/>.

Business Transactions Clinic, New York University School of Law

What they offer: The Clinic provides legal services to nonprofit organizations, as well as to social enterprises that may not have access to the traditional legal market and that operate in areas of concern to the public. They specialize in helping entities with drafting, reviewing, and negotiating contracts and other legal documents relating to corporate, commercial, and financing transactions, including, those relating to relationships with employees, consultants, and other service providers. The Clinic does not typically assist with forming entities.

Contact: For more information about the clinic, please email Jillian Schroeder-Fenlon at jillian.schroederfenlon@nyu.edu or Naveen Thomas at naveen.thomas@nyu.edu.

Additional Information: https://www.law.nyu.edu/sites/default/files/upload_documents/BLTC%20Brochure%20-%20Aug%202018.pdf

Community Development Clinic, Albany Law School

What they offer: They offer pro bono legal services for grassroots groups of long-time residents in low-income neighborhoods, as well as new immigrants. They assist with non-profit and small business formation. Additionally, they provide advocacy assistance for economic development in particular neighborhoods.

Contact:

<https://www.albanylaw.edu/centers/the-justice-center/our-clinics/in-house-clinics/community-development-clinic>

80 New Scotland Avenue,
Albany, NY 12208-3494

Community Development Clinic, Brooklyn Law School

What they offer: Along with its representation of not-for-profits, the Clinic occasionally represents small businesses that serve underrepresented communities with drafting business formation documents; negotiating the leasing, purchasing, financing and renovating of real estate; and drafting, analyzing and negotiating contracts.

Contact:

(718)-780-7994

clinics@brooklaw.edu

250 Joralemon Street,
Brooklyn, New York, 11201 USA

Community Development Project (CDP), Urban Justice Center

What they offer: CDP provides legal and technical assistants to small business owners in NYC, especially to those in worker co-ops.

Contact:

<https://cdp.urbanjustice.org/>

123 William Street, 16th Floor, New York, NY 10038

646-459-3017

cdp@urbanjustice.org

Community & Economic Development Clinic, CUNY Law

What they offer: They offer transactional legal support to worker-owned co-operatives and the organizations that support them, helping them develop democratically-controlled, equitable businesses.

Contact:

<https://www.law.cuny.edu/academics/clinics/ced/>
2 Court Square, Long Island City, NY 11101-4356
carmenhuertas.CED@law.cuny.edu

Entrepreneurial Law Clinic, Fordham University School of Law

What they offer: They offer legal help for startups as they form legal entities, build their workforce, obtain funding, and develop intellectual property. They also produce the Startup LAWnchpad Podcast to educate entrepreneurs about legal issues (available at www.startupLAWnchpad.org, Apple Podcasts, and Spotify).

Contact:

www.law.fordham.edu/ELC
150 W 62nd Street, 9th Floor, New York, NY 10023
To apply to be a client of the clinic: https://www.fordham.edu/info/26738/entrepreneurial_law/10159/client_information)

Tax Preparation Support

Taxes can be stressful. Thankfully, New York State and City have several free tax prep resources, many of which also assist small businesses.

Internal Revenue Service (IRS) Business Questions Hotline

What they offer: They offer help with general questions regarding tax prep advice.

Contact: <http://www.irs.gov>, (800) 829-4933

New York State Department of Taxation & Finance

What they offer: They offer information and resources about filing and paying taxes including free tax return preparation assistance through Volunteer Income Tax Assistance (VITA) and Facilitated Self Assistance (FSA) programs.

Contact: <https://www.tax.ny.gov/fsa/default.htm>

NYC Free Tax Prep Finder

What they offer: They offer a list of New York City based free tax prep services

Contact: <https://www1.nyc.gov/assets/dca/TaxMap/index.html>

Community Tax Aid

What they offer: Free tax preparation for low-income New Yorkers. Low-income New Yorkers include:

- Individuals who made under \$25,000, OR
- People whose family income (including single parent households) is less than \$55,000, AND who have no more than \$3500 in interest, dividends and/or capital gains.

Contact: Their website provides [updated tax preparation sites and dates](#)⁹² as well as information about [what you need to bring](#)⁹³ to an appointment to do your taxes

Grow Brooklyn

What they offer: Free tax preparation for households making \$62,000 or less with a special focus on helping eligible taxpayers apply for the Earned Income Tax Credit, which can result in a significant refund.

Contact: You can make an appointment with them [online](#)⁹⁴.

⁹² <https://www.communitytaxaidnyc.org/for-clients/sites-locations>

⁹³ <https://www.communitytaxaidnyc.org/for-clients>

⁹⁴ <https://www.growbrooklyn.org/taxes/>

HIRING PEOPLE TO WORK FOR YOU

Many businesses can't run only on the labor of one person. If you're going to hire people, you might have some questions. You might need legal advice, and for that, you should consult a lawyer. (See *Small Business Legal Support*, page 97). However, here are some basic general guidelines.

Q. What documentation do I have to fill out/check for the people I hire?

A. This depends on the capacity in which you hire them:

- **As an employee:** For each employee they hire, employers are required to fill out Form I-9 (but only after the employee has accepted the job offer⁹⁵), and while the I-9 does not require employees to enter their Social Security Numbers⁹⁶, it does require

⁹⁵ USCIS Instructions for Form I-9, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (valid through Aug. 31, 2019) at 2, available at <https://secure.i9.talx.com/Popups/Documents/I-9InstructionsNew.pdf>.

⁹⁶ *Id.*



employers to check employee’s work authorization documents to be sure they seem valid and seem to correspond to the person presenting them.⁹⁷ Employers are not required to keep copies of employees’ documents,⁹⁸ and I-9 forms are not sent to the government but instead must be kept on file in case the workplace is audited by ICE, the Department of Labor, or the Department of Justice.⁹⁹ USCIS maintains a [handbook](https://www.uscis.gov/i-9-central/handbook-employers-m-274)¹⁰⁰ all about how employers should complete the I-9.

⁹⁷ See 7.Q. on 14.0 Some Questions You May Have About Form I-9, <https://www.uscis.gov/i-9-central/140-some-questions-you-may-have-about-form-i-9>.

⁹⁸ Some Questions You May Have About Form I-9., *supra*, see 16.Q.

⁹⁹ U.S. Citizenship and Immigration Services, I-9, Employment Eligibility Verification, <https://www.uscis.gov/i-9> (last visited Mar. 5, 2019). (“Where to File: Do not file Form I-9 with USCIS or U.S. Immigrations and Customs Enforcement (ICE). Employers must have a completed Form I-9 on file for each person on their payroll who is required to complete the form.”)

¹⁰⁰ <https://www.uscis.gov/i-9-central/handbook-employers-m-274>

- ***As an individual independent contractor:*** If you are working with an independent contractor, you are not required to complete I-9's for them.¹⁰¹ Instead, they should fill out a W-9 for you (which they can fill out using a Social Security Number, ITIN, or EIN). You don't file a W-9 with the IRS. Instead, you will use the information on it (including the Social Security Number, ITIN, or EIN the independent contractor provides) to fill out a 1099-MISC, which you *do* file with the IRS. The 1099-MISC is how you report payments you've made, subject to some restrictions. *See Tax and Employment Forms, page 21*).
- ***As an individual contractor that is a larger business:*** You are also not required to complete I-9's for any people who work for the independent contractor you have hired¹⁰² -- regardless of the business structure of the independent contractor (LLC, worker's co-op functioning as an LLC, C Corporation, etc.) as it is the responsibility of the independent contractor you are contracting with to verify the work authorization of their employees. Instead, just as you would for independent contractors, you ask the business to fill out a W-9 and use the information from this form to fill out a 1099-MISC.

¹⁰¹ Some Questions You May Have About Form I-9., *supra*, see 14.Q.

¹⁰² *Id.*

Q. Do I have to re-verify people's documents?

A. You have to re-verify the documents of employees whose documents you verified upon receiving their I-9 if those documents have expired¹⁰³ (if their work authorization has not been automatically extended)¹⁰⁴. Certain documents, like permanent residence cards (I-551)¹⁰⁵ and the work permits of people who've received asylum¹⁰⁶, do not need to be re-verified.

Q. Who can I not hire?

A. You are not allowed to hire anyone whom you know is not authorized to work in the U.S.¹⁰⁷ Even if the person you are hiring is an independent contractor, once you have knowledge that this person is unauthorized to work, you are not allowed to hire them.¹⁰⁸

¹⁰³ For more information, see Some Questions You May Have About Form I-9., *supra*, see 14.Q.

¹⁰⁴ *Id.*

¹⁰⁵ Some Questions You May Have About Form I-9., *supra*, see 28.Q.

¹⁰⁶ Some Questions You May Have About Form I-9., *supra*, see 24.Q.

¹⁰⁷ See INA § 274A(a)(1). Federal regulations define "knowing" as "not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition." 8 CFR §274a.1(l)(1).

¹⁰⁸ See INA § 274A(a)(4); see also 8 CFR § 274a.5.

Q. How does the government enforce its prohibition against employers hiring people whom the employer knows are undocumented?

A. There are a few ways it does so.

- The Homeland Security Investigations unit of ICE sometimes conducts I-9 audits. It is estimated that there are 18 million businesses in the U.S, and 6,848 of them were audited in fiscal year 2018 (which is quite an increase over the 1,691 audits conducted in fiscal year 2017)¹⁰⁹.
- ICE can fine and sometimes criminally prosecute employers who have knowingly hired people who are unauthorized to work. To find out more about the penalties employers can face, you can review [ICE's explanation](#)¹¹⁰ of this topic.
- E-Verify is a voluntary program through which employers check that their employees have work authorization. Employers enter the information on I-9s into the E-Verify system, which shares this data with DHS and the Social Security Administration to check if the information matches up.¹¹¹ If they are using E-Verify, employers must post a sign stating this.¹¹²

¹⁰⁹ Center for Immigration Studies, Could the President Mandate E-Verify?, <https://cis.org/Arthur/Could-President-Mandate-EVerify> (last visited Mar. 5, 2019).

¹¹⁰ <https://www.ice.gov/factsheets/i9-inspection>

¹¹¹ E-Verify, Who does E-Verify Share my Information with?, <https://www.e-verify.gov/faq/privacy/who-does-e-verify-share-my-information-with> (last visited Mar. 5, 2019).

¹¹² E-Verify, Where can I find the Notice of E-Verify Participation and Right to Work posters?, <https://www.e-verify.gov/faq/where-can-i-find-the-notice-of-e-verify-participation-and-right-to-work-posters> (last visited Mar. 5, 2019).

Q. How can I prepare for a workplace audit and/or raid?

A. You might want to check out the following resources:

- A [guide¹¹³](#) by the National Employment Law Center (NELP) and the National Immigration Law Center (NILC)
- A [guide¹¹⁴](#) by New York Lawyers for the Public Interest (NYLPI) which is geared towards non-profits but contains information applicable to other businesses

Q. I want to hire/ continue to employ undocumented people in defiance of government laws, and I want to be public about it. Is this a good idea?

A. Being public about going against immigration laws could attract the attention of ICE and result in them targeting your workplace for a raid or audit, especially if ICE believes this is a “pattern or practice”¹¹⁵ for your business. For a more comprehensive discussion of these potential consequences, see Professor Bill Ong Hing’s article “[Beyond DACA -- Defying Employer Sanctions Through Civil Disobedience¹¹⁶](#).”

¹¹³ <https://www.nilc.org/wp-content/uploads/2017/07/Employer-Guide-NELP-NILC-2017-07.pdf>

¹¹⁴ <https://nylpi.org/wp-content/uploads/2017/07/FINAL-2017-Nonprofits-Guidance-Regarding-Immigration-Enforcement.pdf>

¹¹⁵ 8 U.S.C. §1324(a)(f)(1), which states that employers who engage “in a *pattern or practice* of hiring, recruiting or referring for a fee” people who are not authorized to work are subject to criminal penalties. (emphasis added)

¹¹⁶ https://lawreview.law.ucdavis.edu/issues/52/1/Symposium/52-1_Hing.pdf

APPENDICES

APPENDIX A: WORKER CO-OPERATIVE RESOURCES

Starting a Worker Co-operative

Green Worker Co-operatives

What they offer: This organization incubates environmentally sustainable worker co-ops. They offer an intensive [Co-op Academy](#)¹¹⁷ in both English and Spanish to get co-ops off the ground.

Contact:

<http://www.greenworker.coop/>

(718) - 617 - 7807

1231 Lafayette Avenue, 2nd Floor, Bronx, NY 10474

¹¹⁷ <http://www.greenworker.coop/coopacademy>



Urban Upbound

What they offer: Employment services, financial counseling, income support services, community revitalization, and financial inclusion services anchored by the Urban Upbound Federal Credit Union. Their co-op specific services include technical assistance and customized workshops in English and Spanish for pre-startups, startups, and operating businesses.

Contact:

Carlos Cano: carlos@urbanupbound.org; 718-784-0877 Ext. 9479
<http://urbanupbound.org/contactus/>
4-25 Astoria Boulevard, Astoria, NY 11102

Connecting to Resources for Worker Co-operatives

NYC Small Business Services Worker Co-operative Business Development Initiative (WCBDI)

What they offer: This is an initiative of the city government to support worker co-operatives. In addition to the assistance they provide, they also direct city residents to resources regarding:

- Starting a worker co-operative
- One-on-one support for worker co-operatives, especially regarding development of business plans, marketing, governance, bookkeeping, and financial planning
- Legal support for worker co-operatives
- Converting a business to a worker co-operative
- Financing support for worker co-operatives

Contact: <https://www1.nyc.gov/nycbusiness/article/worker-co-operatives>

U.S. Federation of Worker Co-operatives

What they offer: This is a national grassroots membership organization for worker co-operatives that advances worker-owned, -managed, and -governed workplaces through co-operative education, advocacy, and development.

Contact: <https://usworker.co-op/about/>

New Economy Coalition (NEC)

What they offer: NEC is a network of organizations that convenes and connect leaders and amplifies stories, tools, and analysis in support of worker co-operatives.

Contact: <https://neweconomy.net>

SolidarityNYC

What they offer: SolidarityNYC is a collective of organizers and academics who promote, connect, and support New York City's worker co-operative economy.

Contact: <http://solidaritynyc.org/>

Converting a Business to a Worker Co-operative

Democracy at Work Institute (DAWI)

What they offer: DAWI is a national organization that supports worker co-ops by connecting them to existing resources, development of standards and leaders, and advocacy for worker co-ops. DAWI specifically works to expand the worker co-operative model for recent immigrants, communities of color, women, and low-wage workforces.

Contact:

<https://institute.co-op/>

115 Broadway, 5th Floor, New York, NY 10013

(415) 379-9201

info@institute.coop

The ICA Group

What they offer: ICA offers consulting and technical assistance to cooperatives and to businesses converting to worker ownership, and provides tools and resources for understanding worker ownership.

Contact:

icagroup.org

Northampton, Boston, New York

Other services: business valuation; exit planning; research

Worker Co-operative Financing Support

The Working World

What they offer: The Working World is a nonprofit alternative financial institution dedicated to creating and growing co-operatively run businesses using a groundbreaking model that combines non-extractive finance with customized business support services.

Contact:

<https://www.theworkingworld.org/us/>

116 Nassau Street, Fl 5, New York NY 10038

Other services: business creation; business conversion; one-on-one support

APPENDIX B:

YOUR RIGHTS AS AN EMPLOYEE

We understand that it's a reality that people often have to work to support themselves despite not having work authorization. The government often creates hurdles to prevent this from happening such as requiring new employees to fill out I-9 forms, which require that the employer verify that the employee has valid work authorization.

If you work as an employee and do not have work authorization, it is important to know that you are still entitled to certain basic rights. NYC Consumer Affairs has a [guide](#)¹¹⁸ in several languages outlining the rights of people working in NYC, regardless of what their immigration status is. Some of these rights include:

- Minimum wage
- Overtime
- Paid sick leave
- Discrimination-free workplace
- Right to organize
- Safe & healthy workplace

It is important to note that some of these rights like minimum wage and overtime vary depending on industry and whether you work in New York City or New York State. If you believe that any of your rights are being violated as an employee, be sure to document the situation and contact a trusted attorney or appropriate [city](#)¹¹⁹ or [state](#)¹²⁰ agency immediately.

¹¹⁸ <https://www1.nyc.gov/site/dca/workers/workersrights/know-your-worker-rights.page>

¹¹⁹ <https://www1.nyc.gov/site/dca/workers/workersrights/file-workplace-complaint.page>

¹²⁰ https://labor.ny.gov/workerprotection/laborstandards/ls_ContactUs.shtm

APPENDIX C: YOUR RIGHTS AS AN INDEPENDENT CONTRACTOR

Like employees, independent contractors and freelance workers are also entitled to some basic legal rights. These include:

- Written contract
- Timely payment
- Freedom from retaliation
- Freedom from discrimination
- Right to file a complaint
- Right to sue

These rights are detailed further below and can be found in a [guide](#)¹²¹ from the Office of Labor Policy & Standards within the Department of Consumer Affairs (DCA).

Written Contract: If your contract is worth \$800 or more, it must be in writing. This includes all agreements between you and the hiring party that total \$800 in any 120-day period. The written contract must spell out the work you will perform; the pay for the work; and the date you get paid. You and the hiring party must keep a copy of the written contract.

Timely Payment: The hiring party must pay you for all completed work. You must receive payment on or before the date that is in the contract. If the contract does not include a payment date, the hiring party must pay you within 30 days after you complete the work.

¹²¹ <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Protecting-Freelance-Workers.pdf>



Freedom from Retaliation: It is illegal for a hiring party to penalize, threaten, or blacklist you because you exercised your rights.

Freedom from Discrimination: The NYC Human Rights Law protects New Yorkers against many kinds of discrimination. If you experience discrimination, call the NYC Commission on Human Rights Infoline at 311.

Right to File a Complaint: You can file a complaint with DCA's Office of Labor Policy & Standards. DCA will notify the hiring party who must respond to the complaint within 20 days. DCA will also provide information to help you find a lawyer, understand the court process, and more. Download the complaint form at <https://www1.nyc.gov/site/dca/index.page> or call 311. If you have questions, email freelancer@dca.nyc.gov.

Right to Sue: You can sue the hiring party in court to seek damages. If you are not timely paid for your work, you have a right to collect double the amount you weren't paid, damages for retaliation, and payment of attorneys' fees and costs.

APPENDIX D: BUSINESS REGISTRATION FORMS¹²²

Business type	State Filings
Independent Contractor (or) Sole proprietorship	<ul style="list-style-type: none"> ▪ No state business registration necessary ▪ Certificate of Assumed Name* (also known as “doing business as” name) ▪ Consult local city and state rules regarding special licenses
General partnership	<ul style="list-style-type: none"> ▪ No state business registration necessary ▪ Partnership Agreement (recommended) ▪ Consult local city and state rules regarding special licenses
Limited liability corporation (LLC)	<ul style="list-style-type: none"> ▪ Application for Reservation of Name ▪ Articles of Organization ▪ Certificate of Publication ▪ Certificate of Amendment* ▪ Certificate of Change* ▪ Certificate of Resignation of Registered Agent* ▪ Certificate of Resignation for Receipt of Process* ▪ Certificate of Correction* ▪ Articles of Dissolution* ▪ Certificate of Assumed Name*

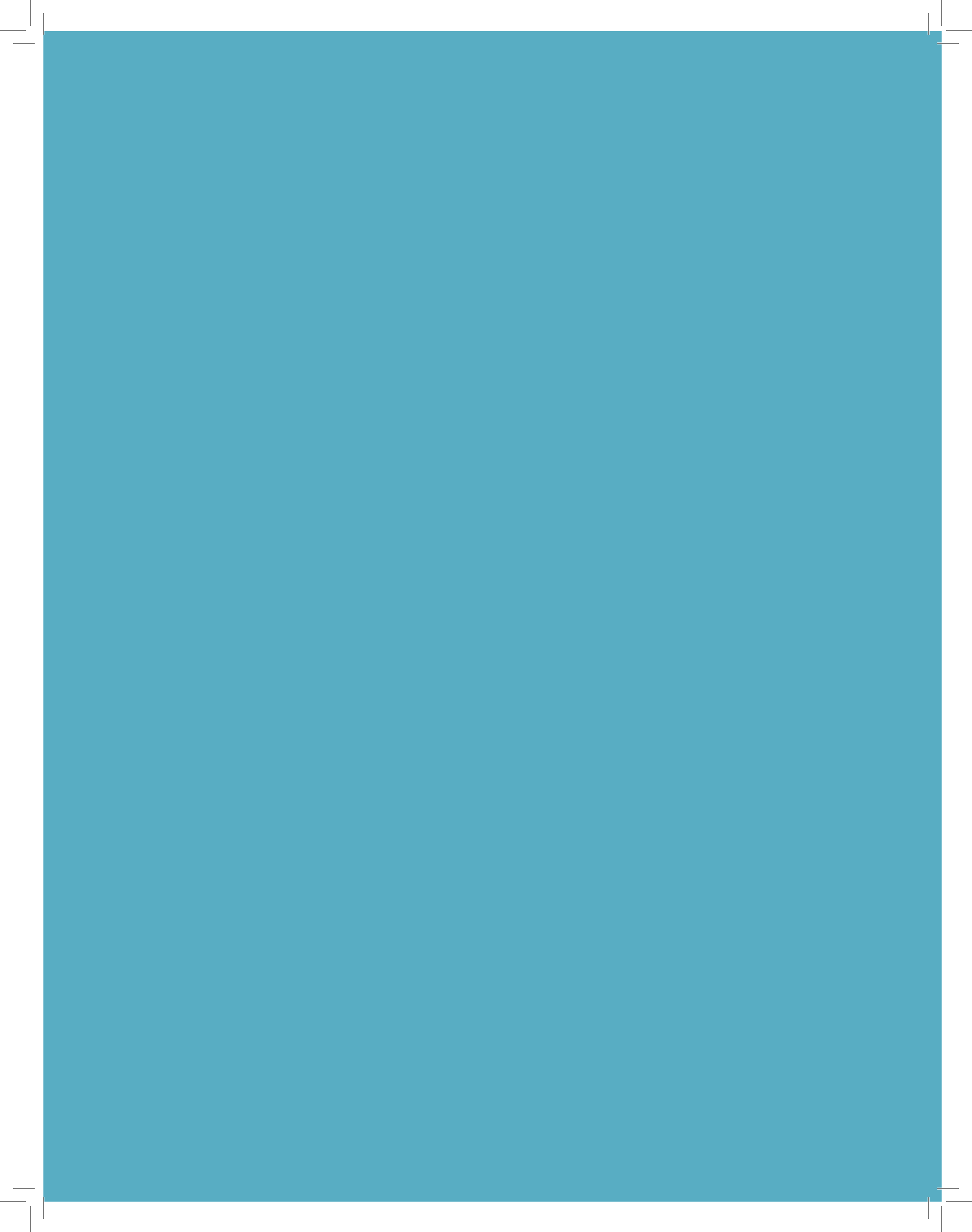
¹²² For a complete list of relevant business forms and filings, visit: <https://www.dos.ny.gov/corps/index.html>

Business type	State Filings
C Corporation	<ul style="list-style-type: none"> ▪ Application for Reservation of Name ▪ Certificate of Incorporation ▪ Certificate of Amendment* ▪ Certificate of Change* ▪ Certificate of Change of Address of Registered Agent* ▪ Certificate of Resignation of Registered Agent* ▪ Certificate of Resignation for Receipt of Process* ▪ Certificate of Correction* ▪ Certificate of Dissolution* ▪ Certificate of Assumed Name*
Non-profit corporation	<ul style="list-style-type: none"> ▪ Application for Reservation of Name ▪ Certificate of Incorporation ▪ Certificate of Amendment* ▪ Certificate of Change* ▪ Certificate of Resignation of Registered Agent* ▪ Certificate of Annulment of Dissolution and Reinstatement of Corporate Existence* ▪ Certificate of Correction* ▪ Certificate of Dissolution* ▪ Certificate of Assumed Name*

*If necessary.

Notes

Notes





NYSYLC

**New York State
Youth Leadership Council**

www.nysylc.org

info@nysylc.org

@NYSYLC