



04.26.2016

## External Memorandum No. 16-004

To  
LSBPSE Applicants &  
Licensees

From  
Fabian P. Blache III  
Executive Secretary

CC  
FILE

Re  
External Memorandum  
16-004  
The use of 1099  
Individuals as Security  
Officers

**Purpose:**

The purpose of this External Memorandum is to address the lack of efficacy in the use of 1099 individuals as security officers. **Clearly stated, this is not allowable.**

**Basis:**

It has come to our attention that some companies throughout the state are actively engaged in the practice of posting individuals as security officers who are not *employees* but rather *non-employee* service providers. This is an unacceptable practice that falls within the regulatory purview of the Louisiana State Board of Private Security Examiners (LSBPSE).

L.R.S. 37:3272 states, "**Security Officer**" means an individual who is ***EMPLOYED*** by a **contract security company whether armed or unarmed, to protect a person or persons or property or both...**". Individuals who are not *employed*, by definition, cannot be security officers, and cannot be registered by the LSBPSE to be placed into service as such.

The process of licensure within the LSBPSE is designed to protect the public from being serviced by an unregulated, improperly trained and potentially underinsured private security workforce. Hence, companies must obtain licensure, and the security officers that they deploy must likewise be registered in accordance with law and rule pursuant to L.R.S. Title 37 and LAC 46 LIX.

**The rigor of this regulatory mandate and process exists to protect the public.**

The requirement that all companies follow the law further assures that no one company enjoys a sustainable competitive advantage over the other. Companies that fail to register their security officers, or by any other mechanism fail to properly capture them as *bona fide*

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employees, thereby reduce their company's cost of doing business, which can result in other unfair and unlawful practices.

Based upon a comprehensive review of the Louisiana State Board of Private Security Examiners' laws and rules, along with the intent of the insurance, licensure and registration requirements contained therein, **the use of 1099 individuals as security officers is not only prohibited but punitively actionable.**

Companies that use 1099 individuals in security officer roles circumvent the LSBPSE's mandate to protect the public from being serviced by an unregulated workforce. Individuals issued a 1099, by IRS definition, *are not employees* but are rather *sub-contractors*. Additionally, *sub-contractors* are regularly excluded from requisite insurances (required by statute) including the *unemployment* and *workers' compensation* insurance policies of the company managing their deployment as sub-contractors.

**This model and practice is not an allowable under Louisiana state law.**

**NOTE: The only sub-contractor relationship that can exist in the context of the LSBPSE is when one *licensed company* contracts with another.**

Moreover, if companies hire their security officers as *sub-contractors*, thereby excluding them from their insurance coverages, these *sub-contractors* would have to "incorporate", and secure their own LSBPSE company licenses, general liability, errors & omissions, and care, custody and control insurance layers to function as private security professionals per state law.

This means that for every person captured as a 1099 individual during a compliance review or investigative audit, the company under examination must have a certificate of incorporation, in addition to copies of that individual sub-contractors' insurance policies on file.

Not only would these company's be subject to investigative audit by the Louisiana State Board of Private Security Examiners, but they would also be **subject to premium audit** by their own workers' compensation carrier, and the Louisiana Workforce Commission's divisions of Unemployment and Workers' Compensation Insurance.

**SEE NEXT PAGE**

IRS.gov supports the Louisiana State Board of Private Security Examiners' findings with respect to the classification of 1099 individuals as *non-employees* and *sub-contractors* with the following:

## Form 1099-MISC & Independent Contractors

**Question: What is the difference between a Form W-2 and a Form 1099-MISC?**

**Answer:**

Although both of these forms are called information returns, they serve different functions.

Employers use [Form W-2](#), *Wage and Tax Statement*, to:

- Report wages, tips, and other compensation paid to **an employee**.
- **Report the employee's income** and social security taxes withheld, and other information.
- Report wage and withholding information to **the employee** and the [Social Security Administration](#). The Social Security Administration shares the information with the Internal Revenue Service.

Payers use [Form 1099-MISC](#), *Miscellaneous Income*, to:

- **Report payments made in the course of a trade or business to a person who is not an employee or to an unincorporated business.**
- Report payments of \$10 or more in gross royalties or \$600 or more in rents or compensation. Report payment information to the IRS and the person or business that received the payment.

Lastly, the Louisiana State Board of Private Security Examiners has concurrence from Department of Public Safety & Corrections Office of General Legal Counsel as of April 25<sup>th</sup> 2016, regarding these findings.

LSBPSE Staff will assure adherence to the internal and external guidance's issued by the Executive Secretary pursuant to the aforementioned findings.

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