

Why Should Workers Care About **MISCLASSIFICATION?**

OVERVIEW

When is a worker misclassified? When an employer erroneously treats an employee as an independent contractor, 1099 worker or other non-employee (member of an LLC).

Why do employers misclassify employees as independent contractors? To reduce labor costs by evading employment taxes and laws that protect workers.

What are the results of misclassification? Employee benefits and protections are eliminated and law-abiding employers suffer. These illegal practices lower standards for all workers, especially those in highly competitive markets and industries where employers try to reduce overhead, often at the expense of their workers.



overtime



workers
compensation



unemployment
insurance



other workplace
protections



minimum wage

By not complying with the law, employers who misclassify workers have an unfair advantage over competitors who pay fair wages, taxes due, and ensure wage and other protections for their employees.

“ Employers who misclassify workers do not pay their fair share of payroll taxes, which cheats critical state and federal programs. The misclassification of workers shortchanges every single taxpayer by forcing them to pick up the slack for those who break the law. ”

Tom Perez
former DOL Secretary of Labor

“ Legitimate independent contractors are valuable contributors to our economy, but those who deliberately misclassify actual employees as independent contractors — or partners — are a serious problem in many industries, especially in construction. We will continue to work together with other enforcement authorities to ensure a fair and level playing field for businesses, and fair and full pay for workers. ”

David Weil
Former DOL Wage and Hour Division Administrator

WHY SHOULD I CARE?

Misclassified employees lose workplace protections, including minimum wage, overtime, workers compensation, unemployment insurance and the right to join a union; face an increased tax burden; and are often ineligible for unemployment insurance, workers compensation and disability compensation.

Employers may misclassify workers as a way to circumvent laws enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC protects the workplace civil rights of employees, including prohibitions of employment discrimination based on factors such as age, race, gender or disability.

Independent contractors are usually not permitted to enroll in employer-based health and pension plans, allowing employers to save money on company provided benefits.

Employers may misclassify their employees to avoid having to verify that workers are U.S. citizens or covered by a work visa. By doing so, employers can ignore labor laws with impunity and exploit low-wage immigrant workers with few legal repercussions.

Workers misclassified as independent contractors typically have lower incomes and little economic security.

Finally, employers can thwart union organizing or dilute bargaining units by misclassifying workers. Independent contractors are not covered by the National Labor Relations Act.

WHAT IS THE EXTENT OF WORKER MISCLASSIFICATION?

Misclassification occurs in nearly all major industries:



delivery



building
maintenance



trucking



agricultural



home
health care



child care

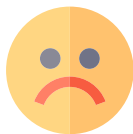


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Misclassification rates are especially high in construction. For example, in 2007 the Fiscal Policy Institute released a study on misclassified construction workers in New York City, estimating that 50,000 (one in four) workers were misclassified as independent contractors or employed by construction companies completely off the books.

MISCLASSIFICATION...

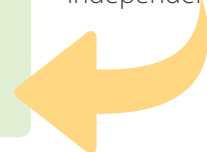
- Denies workers hard-earned wages.
- Hurts families who depend most on those wages.
- Leaves workers without important protections if they're injured on the job or laid off.
- Results in an unfair and illegal competitive advantage for companies that misclassify.



1 in 4 WORKERS
were **misclassified** as
independent contractors

Up to **30%** of
firms had **misclassified**
EMPLOYEES

The DOL commissioned a study in 2000 to determine the extent of misclassification in the unemployment insurance system. The study found that up to 30 percent of audited firms had employees misclassified as independent contractors.



CONTACT UNEMPLOYMENT INSURANCE

If you have additional questions about classification or if you know of an employer who may be misclassifying workers, contact Unemployment Insurance at 801-526-9577 or use the worker misclassification tool at: jobs.utah.gov/ui/Employer/Public/WorkerClassification.aspx