

Independent Contractor Misclassification



The Office of the
Minnesota Attorney General
helping people afford their lives and live with dignity, safety, and respect

Who Is An Independent Contractor?

Individuals who perform regular work for a company in the course of that company's business are employees. An independent contractor, on the other hand, is a worker who is not an employee and independently contracts with an individual or business to provide a good or perform a service.

Independent contractors receive a Form 1099 for taxes while employees receive a Form W-2.

Independent Contractor Misclassification

Independent contractor misclassification is a serious problem in Minnesota.

- As many as 20% of employers misclassify at least one employee.
- Using independent contractors has grown to almost 10% of employment.

Employers misclassify employees as independent contractors for many reasons, including:

- To avoid paying employees the minimum wage;
- To avoid paying employees overtime wages;
- To get out of paying their fair share of Workers' Compensation insurance;
- To get out of paying their fair share of Unemployment Insurance;
- To avoid complying with employment discrimination laws;
- Avoiding employer-based health and pension obligations;
- To get out of complying with immigration laws;

- To avoid dealing with union organizing; and
- To get out of obligations to pay social Security and Medicare (FICA) taxes.

This misclassification hurts employees, the public, and employers who play by the rules.

- Misclassified workers don't get the protections of Minnesota's wage and hour laws or benefits like Workers' Compensation and Unemployment Insurance that guard against workplace injuries and economic downturns.
- Minnesota is deprived of tax revenue that the state would otherwise receive from payroll taxes, Workers' Compensation premiums, and money for Unemployment Insurance.
- Businesses that properly classify employees are put at a competitive disadvantage when competing with businesses that misclassify workers.

Independent contractor misclassification is wage theft.

How Do You Know If You Are An Independent Contractor?

Employers cannot legally classify a worker as an independent contractor if the worker qualifies as an employee. An employer also cannot circumvent protections for employees by forcing workers to sign a contract saying that they are independent contractors, when in reality they are employees.

Generally, a worker qualifies as an employee in Minnesota for the purposes of wage and hour protections if:

- The employer controls how the worker performs his or her work.
- The work performed by the worker is an essential part of the employer's business.

- The employee does not have an opportunity to profit or a risk of loss pursuant to the contract.
- The employer provides the worker with the materials, tools, and workspace the worker needs to perform work.
- The employer has the right to discharge a worker with little notice, without cause, or for failure to follow specified work rules or methods set out by the employer.
- The worker does not offer the services he or she performs for the employer to the general public.
- The employer is responsible for the negligence, personal behavior, and work actions of the worker with regard to customers and the general public while the worker is performing work.
- The worker is paid by the hour, week, month or on a piece rate.
- The worker can quit at any time without penalty.
- The worker has an office, business license, and a place to perform his or her work that is independent of the employer.
- The worker is compensated for doing a particular job, such as preparing someone's taxes.
- The worker is solely responsible for his negligence, behavior, and the manner in which he or she performs the work.
- The worker has invested in tools, software, office space, and other materials that are not tied to a job with a particular employer.
- The worker cannot quit a job or terminate a contract with an employer without incurring a penalty.

Industries Where Misclassification Is Widespread

While independent contractor misclassification occurs in all industries, it is particularly prevalent in industries with scattered worksites such as:

- Construction
- Janitorial and housecleaning
- Home care
- Trucking

"Common industry practice" is not an excuse for an employer to misclassify an employee as an independent contractor.

None of these factors are determinative, and a worker does not need to meet all of these factors in order to be considered an employee.

Generally, a worker is a legitimate independent contractor if:

- The worker determines when, where, and how to performs the work.
- The worker's work is not essential to the employer's business model.
- The worker hires his or her own employees and assistants to complete the work and has continuing and recurring obligations related to the type of work he or she performs.
- The worker cannot have his or her contract terminated so long as the worker completes the proposed end result of the contract.

Who To Contact

If you believe you have been misclassified, there are many governmental organizations you can contact, including:

The Attorney General's Office has broad authority to investigate violations of Minnesota's wage-related laws, including worker misclassification. The Attorney General's Office can be contacted at:

Office of Minnesota Attorney General Keith Ellison

445 Minnesota Street, Suite 1400, St. Paul, MN 55101
(651) 296-3353 (Twin Cities Calling Area)
(800) 657-3787 (Outside the Twin Cities)
(800) 627-3529 (Minnesota Relay)
www.ag.state.mn.us

The Minnesota Department of Labor and Industry ("DLI") is the state agency with authority to investigate violations of and enforce many of Minnesota's wage-related laws, including worker misclassification. DLI can be contacted at:

Minnesota Department of Labor and Industry

443 Lafayette Road North, St. Paul, MN 55155
(651) 284-5070 or (800) 342-5354
www.dli.mn.gov
Email: dli.laborstandards@state.mn.us

The Minnesota Department of Employment and Economic Development ("DEED") enforces worker misclassification laws as part of its authority to administer the unemployment insurance program. DEED can be contacted at:

**Minnesota Department of
Employment and Economic Development**

1st National Bank Building
332 Minnesota Street, Suite E200, St. Paul, MN 55101
(651) 259-7114 or (800) 657-3858
www.mn.gov/deed/
Email: DEED.CustomerService@state.mn.us

The Minnesota Department of Revenue ("DOR") enforces worker classification laws to the extent they relate to employers' compliance with tax law. DOR can be contacted at:

Minnesota Department of Revenue

Tax Evasion or Tax Fraud Tips
Mail Station 6590
600 N. Robert Street, St. Paul, MN 55146
(651) 297-5195 or (800) 657-3105
www.revenue.state.mn.us
Email: tax.fraud@state.mn.us