

# 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 and it is wage theft.

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

Misclassification hurts workers, the public, and employers who play by the rules.

- Misclassified workers don't get the same protections as employees, including protections under Minnesota's wage and hour laws, discrimination laws, and whistleblower protections.
- Misclassified workers don't receive the same benefits as employees, including Workers Compensation that guards against workplace injuries, and Unemployment Insurance which helps when a worker is discharged or laid off.
- Minnesota is deprived of tax revenue that Minnesota would otherwise receive from payroll taxes. Misclassified workers are burdened with the full financial cost of Social Security and Medicare, which

would otherwise be split evenly between workers and employers.

- Businesses that properly classify workers as employees are at a competitive disadvantage when competing with businesses that misclassify workers as independent contractors

## How Do You Know If You Are An Independent Contractor?

It is illegal for an employer to classify a worker as an independent contractor if the worker qualifies as an employee. An employer also cannot make a worker an independent contractor by having 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 their 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 because of the work an employee does. However, opportunity for higher earnings because of piecemeal work or commissions does not mean the worker is more likely to be an independent contractor.
- The employer provides the worker with the materials, tools, and workspace the worker needs to perform work.
- The employer can fire the worker without notice, without cause, or because the worker failed to follow specified work rules or methods set out by the employer.

- The worker does not offer the services they perform for the employer to the general public.
- The employer is responsible for the negligence, personal behavior, and work actions of the worker while the worker is performing work.
- The worker is paid by the hour, week, month or on a piece rate, instead of being paid by the job.
- The worker can quit at any time without penalty.

None of these factors alone determine if a worker is an employee or independent contractor, 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.
- The worker hires their own employees and assistants to complete the work and has continuing and recurring expenses related to the type of work they perform.
- The worker cannot have their contract terminated so long as the worker completes the end result of the contract.
- The worker has an office, business license, and a place to perform their work that is independent of the employer.
- The worker is compensated for doing a particular job, that is not ongoing.
- The worker is solely responsible for their own negligence, behavior, and the manner in which they perform 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.

## Misclassification in the Construction Industry

Starting in March 2025, a construction worker is considered an independent contractor if they own a business, and that business meets all of the following requirements:

1. The business was established and maintained separately from and independently of the person who the business provides services or work for;
2. The business owns, rents, or leases its own equipment, tools or office space;
3. The business provides or offers to provide the same or similar construction services to multiple people or the general public;
4. The business is in compliance with federal and Minnesota tax laws;
5. The business is in good standing as a business entity with the Office of the Secretary of State of Minnesota if applicable;
6. The business has a Minnesota unemployment insurance account if required;
7. The business has workers compensation insurance if required;
8. The business has all required licenses, registrations, and certifications;
9. The business is operating under a written contract to provide specific services, and that contract must be signed and dated by both the business entity and the person for whom work is being performed; is fully executed no later than 30 days after the date work commences; identifies the specific services to be provided; and provides compensation on a commission, per-job, or competitive bid basis;
10. The business submits invoices and receives payment for completion of specific services provided under written contract in the name of the business entity. Payments made in cash do not meet this requirement;

11. The terms of the contract allow the business to control the means of performing services, and the business actually controls the performance of specific services;
12. The business incurs the main expenses and costs related to providing the specific services under the written contract;
13. The business is responsible for the completion of the specific services to be provided or performed under the written contract, and the business is responsible for failure to complete the specific services; and
14. The business may realize additional profit or suffer a loss under the contract.

## Penalties

A business that misclassifies employees as independent contractors may be subject to the following penalties:

- Compensatory damages to the worker. This may include:
  - The difference between what the worker should have been paid as an employee, including minimum wage; overtime, shift differentials, and vacation and sick pay;
  - The value of benefits such as health insurance, life and disability insurance, and retirement plans;
  - The value of employer contributions to Unemployment Insurance, Social Security, and Medicare;
  - Any other costs and expenses incurred by the worker resulting from the employer's failure to classify them as an employee.
- A penalty of up to \$10,000 per worker that the employer failed to properly classify as an employee.

- A penalty of up to \$10,000 for each failure to properly classify a worker as an employee under the applicable local, state, or federal law; failure to disclose a worker as an employee when required to do so under any applicable local, state, or federal law; and requirement or request that an individual enter into an agreement that misclassifies, misrepresents, or treats the person as an independent contractor.
- A penalty of \$1,000 for each instance of obstructing the Department of Labor and Industry's investigations into alleged worker misclassification violations.

## 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**

#### **Wage Theft Division**

445 Minnesota Street, Suite 600  
St. Paul, MN 55101

(651) 296-3353 (Twin Cities Calling Area)

(800) 657-3787 (Outside the Twin Cities)

(800) 627-3529 (Minnesota Relay)

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

### **Minnesota Department of Labor and Industry**

443 Lafayette Road North St. Paul, MN 55155

(651) 284-5005 or (800) 342-5354

[www.dli.state.mn.us](http://www.dli.state.mn.us)

Email: [dli.laborstandards@state.mn.us](mailto:dli.laborstandards@state.mn.us)

The Minnesota Department of Employment and Economic Development enforces worker misclassification laws as part of its authority to administer the unemployment insurance program. The Department of Employment and Economic Development 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](http://www.mn.gov/deed)

Email: [DEED.CustomerService@state.mn.us](mailto:DEED.CustomerService@state.mn.us)

The Minnesota Department of Revenue enforces worker classification laws to the extent they relate to employers' compliance with tax law. The Department of Revenue 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](http://www.revenue.state.mn.us)

Email: [tax.fraud@state.mn.us](mailto:tax.fraud@state.mn.us)

The Minnesota Department of Commerce's Fraud Bureau may identify misclassified workers through its criminal investigations into suspected workers' compensation fraud. The Department of Commerce can be contacted at:

**Minnesota Department of Commerce**

Golden Rule Building  
85 7th Place East Suite 280  
Saint Paul, MN 55101  
(651) 2539-1600  
[mn.gov/commerce/](http://mn.gov/commerce/)

Email: [consumer.protection@state.mn.us](mailto:consumer.protection@state.mn.us)