

# Why Should Companies Care About MISCLASSIFICATION?

## OVERVIEW

**What is a misclassified worker?** A worker that is an employee is erroneously treated by the employer 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, avoid 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?

A misclassified employee lacks minimum wage, overtime, workers compensation, unemployment insurance and other workplace protections. Employers often misclassify workers to reduce labor costs and avoid employment taxes. By not complying with the law, these employers have an unfair advantage over competitors who pay fair wages, taxes due and ensure wage and other protections for their employees. These illegal practices lower standards for all workers, especially in highly competitive markets and industries where employers try to reduce overhead, often at the expense of their workers.

Companies that misclassify their workers have an unfair advantage over law-abiding competitors because they can lower their labor costs by as much as 40 percent. This uneven playing field means that lawful employers are underbid and lose business, wages and labor standards are depressed across the board, and ultimately lawful employers subsidize the freeloaders in the form of increased workers' compensation, unemployment and health insurance premiums.

Misclassification also causes federal, state and local governments to suffer revenue losses as employers circumvent their tax obligations. This lost revenue could result in increased taxes for employers that comply with statutes and policies.

Penalties and fines are levied for worker misclassification.

## WHAT IS THE EXTENT OF WORKER MISCLASSIFICATION?

Misclassification occurs in nearly all major industries:



delivery



building  
maintenance



trucking



agricultural



home  
health care



child care

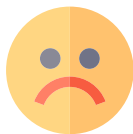


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Misclassification rates are especially high in construction. For example, in 2007 the Fiscal Policy Institute released a study on misclassified construction workers in New York City, estimating that 50,000 (one in four) workers were misclassified as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

## MISCLASSIFICATION...

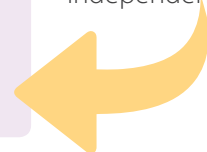
- Denies workers hard-earned wages.
- Hurts families who depend most on those wages.
- Leaves workers without important protections if they're injured on the job or laid off.
- Results in an unfair and illegal competitive advantage for companies that misclassify.



**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](https://jobs.utah.gov/ui/Employer/Public/WorkerClassification.aspx)