What is Worker Misclassification?

Worker misclassification occurs when employers improperly classify workers as “independent contractors” instead of “employees.”

Worker misclassification is illegal, and the practice often leads to employers avoiding required workers’ compensation insurance, unemployment coverage, or other employer paid taxes and withholdings.

There are serious consequences for employers that misclassify workers, including:
- tax penalties and interest;
- labor law and safety violations;
- back unemployment insurance premiums; and
- costly lawsuits if a worker is injured on the job.

State and federal law, not contractual agreements, determine which workers can be classified as independent contractors.

For More Information

Visit the Maine Worker Misclassification website: www.maine.gov/labor/misclass for more information, or contact one of the agencies listed below.

**Maine Department of Labor**
54 SHS, Augusta, ME 04333
Tel: (207) 623-7900
Fax: (207) 623-7938
TTY: 1-800-794-1110
www.maine.gov/labor

**Maine Workers’ Compensation Board**
27 SHS, Augusta, ME 04333
Tel: (207) 287-7071
Fax: (207) 287-5895
TTY: (207) 287-6119
www.maine.gov/wcb

**Internal Revenue Service**
40 Lakemont Road, Newport, VT 05855
Tel: (802) 334-0252
Fax: (802) 334-5607
www.irs.gov

**Maine Revenue Services**
Income/Estate Tax Division
24 SHS, Augusta, ME 04333
Tel: (207) 626-8475
Fax: (207) 624-9694
TTY: 1-888-577-6690
www.maine.gov/revenue

Independent Contractor or Employee?

What You Need to Know About Independent Contractors and Worker Misclassification

A publication of the Joint Enforcement Task Force on Employee Misclassification
www.maine.gov/labor/misclass
Employee or Independent Contractor?

How do you know the difference? State law presumes a worker is an employee unless the business or person who does the hiring can demonstrate otherwise.

Although each employment situation may be unique, state law looks at the amount of direction or control the worker has in their work.

Workers performing services for a business or an individual who controls the work to be done and how it will be done are typically considered to be employees under Maine law.

The employment status of that worker as an employee or an independent contractor affects who is responsible for paying employment taxes and withholdings, liability for workers compensation and unemployment insurance coverage, and applicability of labor laws.

Maine law establishes the standards used by the Maine Department of Labor and the Maine Workers’ Compensation Board to determine which workers are independent contractors. Maine Revenue Services follows the same standards as the Internal Revenue Service.

Find out more by contacting agencies listed on the back of this brochure.

<table>
<thead>
<tr>
<th><strong>Independent Contractor</strong></th>
<th><strong>Employee</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Free from direction and control</td>
<td>• Means and manner of work are (or can be) controlled by employer</td>
</tr>
<tr>
<td>• Has necessary skills and training to complete job</td>
<td>• May be trained by employer to perform job</td>
</tr>
<tr>
<td>• Has a business location</td>
<td>• May work at employer’s business location</td>
</tr>
<tr>
<td>• Performs services for multiple customers</td>
<td>• Works for one employer, may serve that employer’s customers</td>
</tr>
<tr>
<td>• Sets own hours</td>
<td>• Hours set by employer</td>
</tr>
<tr>
<td>• Determines own price for contracted services</td>
<td>• Accepts wage, salary, or commission determined by the employer</td>
</tr>
<tr>
<td>• Not eligible for employee benefits</td>
<td>• Employer may provide and control equipment and tools</td>
</tr>
<tr>
<td>• Provides equipment and tools used to complete job</td>
<td>• Employer may purchase materials and supplies</td>
</tr>
<tr>
<td>• Supplies materials needed to do job</td>
<td>• Employer liable for employee errors and/or accidents</td>
</tr>
<tr>
<td>• Personally liable for errors and/or accidents</td>
<td>• Is hired and can be fired by employer</td>
</tr>
<tr>
<td>• Files self-employment taxes</td>
<td>• May quit working for an employer at any time</td>
</tr>
<tr>
<td>• Has right to hire and fire workers</td>
<td></td>
</tr>
<tr>
<td>• Must legally complete each contract</td>
<td></td>
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</tbody>
</table>