Independent Contractor Misclassification

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Who Is an Independent Contractor?

There is no universal test in Minnesota for whether a worker is an employee or independent contractor. Whether a worker is an independent contractor depends on a number of factors. Different legal analysis arise depending on the circumstances and the questions being asked. For example, whether a worker is entitled to unemployment insurance is a different test than whether they qualify for workers' compensation.

Generally, an individual who performs regular work for a company in the course of that company's business, and whose work is managed by that company, is an employee. A worker who has their own business and independently contracts with multiple businesses to provide a specific good or perform a service is an independent contractor. Independent contractors receive a Form 1099 for taxes while employees receive a Form W-2.

Independent Contractor Misclassification

Misclassification of workers as independent contractors is wage theft. Misclassified workers are not guaranteed minimum wage and overtime, and sometimes they earn less. Misclassified workers also don't get the same protections as employees such as unemployment insurance, workers' compensation, or anti-discrimination and retaliation protections.

Misclassification also hurts the public and employers. Businesses that properly classify workers as employees can be at a competitive disadvantage. Minnesotans lose out on tax revenue that would otherwise be received from payroll taxes, and independent contractors are burdened with the full cost of Social Security and Medicare.

Independent contractor misclassification is a serious problem in Minnesota. As many as 20% of employers misclassify at least one employee. Use of independent contractors by companies has grown to almost 10% of the workforce.

How Do You Know If You Are an Independent Contractor?

There are multiple tests to determine if you are an independent contractor or employee. Below are tests used in some of the most common employment situations.

Unemployment insurance.

Minnesota's unemployment insurance program is administered by the Department of Employment and Economic Development. For more information on independent contractors and unemployment insurance, please visit DED at: https://www.uimn.org/employers/wages-taxes/independent-contractors/index.jsp.

Unemployment insurance uses "common law" factors consisting of (Minn. Stat. § 181.723):

- Does the employer or the worker control the means and manner in which the services are performed?
- Can either party sue for breach of contract, or can the employer fire the worker without incurring any liability?
- Does the employer or the worker determine how much it costs to provide goods or services? Is the worker paid by the job or on a regular basis?
- Does the employer or the worker provide tools and equipment, a vehicle, or other necessary supplies?
- Does the employer or the worker control where the worker performs work?

Taxation and Revenue.

The Department of Revenue considers many factors when deciding if a worker is an independent contractor or an employee. The factors fall into 3 main categories: behavioral control, financial control, and the relationship of the parties. For more information, contact the Department of Revenue or visit: https://www.revenue.state.mn.us/independent-contractor-or-employee.

Workers' Compensation.

Minnesota's workers' compensation program is administered by the Department of Labor and Industry. When determining whether a worker is an independent contractor or an employee for workers' compensation, the Department of Labor and Industry considers a multi-factor test that varies based on occupations. These guidelines are found in Minnesota Rules Chapter 5224. In general the factors are (Minn. R. 5224.0340), with "control" being the most important factor:

- The right to control;
- The right to discharge;
- Whether the worker is available to the general public;
- Whether the worker is compensated on a per job basis;
- Whether the individual is in a position to realize profit or loss;

- Who can terminate the working relationship, and whether there are consequences for termination;
- Investment in tools;
- Whether the worker is responsible for negligence;
- And whether services are fundamental to the business.

State wage claims.

When determining whether a worker is an independent contractor or an employee for the purposes of minimum wage and overtime violations, the Department and Labor and Industry promulgated Minnesota Rule 5200.0221. The test used is similar to the general workers' compensation test explained above except control is *not* weighed more heavily than other factors.

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 Unit

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.mn.gov

Email: 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

mn.gov/deed

Email: 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

Email: 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/
Email: consumer.protection@state.mn.us

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Wage Theft

Wage theft occurs any time an employer does not pay an employee everything the employee is owed by law. Nationally, employees are underpaid by as much as $50 billion dollars each year due to wage theft.

Women's Economic Security in Minnesota

Protecting and promoting women's economic security and equal access to employment and opportunity in Minnesota is essential to Minnesota's economic health. Minnesota's laws protecting these rights keep talented women in the workforce, help lift up families and children, and benefit Minnesota as a whole by ensuring that everyone—regardless of gender—can afford to live their lives with dignity and respect.