

Employee or Independent Contractor

Why it Matters

Worker classification is important to employers because the correct classification determines whether the employer has legal obligations for:

- Unemployment Insurance
- Workers Compensation
- Wage Payments
- Work Hours
- Record Keeping
- Civil Rights Protections

When employers intentionally misclassify workers as independent contractors, they avoid:

- Unemployment Insurance Taxes
- Workers Compensation Coverage
- Withholding State and Federal Income Taxes
- Paying Social Security and Medicare Taxes

Employers who misclassify workers as independent contractors gain an unfair competitive advantage

Legal Consequences

Under the law, workers are presumed to be employees and subject to tax unless determined by law to be independent contractors. An employer found to be utilizing misclassified workers may be liable for additional tax, interest and penalties. Employers engaged in the construction trades may also be subject to a stop work order. In addition, employers engaged in the painting or drywall finishing of buildings or other structures who willfully provide false information to DWD for the purpose of misclassifying or attempting to misclassify a worker as an independent contractor can be fined \$25,000 for each violation.

Steps to Classify a Worker

DWD has developed a website to help employers correctly classify their workers:

http://dwd.wisconsin.gov/worker_classification

This online test takes employers through each factor in the law that is used to determine whether a worker is an independent contractor. The website also provides employers with real life case examples and case law to help them evaluate whether their workers are independent contractors.

If a worker does not meet the independent contractor criteria, report the worker as an employee and file wage and tax reports at <http://dwd.wisconsin.gov/uitax>.

The decision of an employer to classify a worker as an independent contractor is subject to review and determination by the department.

Report Suspected Misclassified Workers

If you suspect an employer is utilizing misclassified workers, please contact us:

- E-mail: workermisclass@dwd.wisconsin.gov
- Call: (608) 261-5835

