

# U.S. Department of Labor Wage & Hour Division



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# About WHD

- Laws administered by WHD cover 7.3 million businesses and 135 million workers
- Employees are entitled to the protections of laws enforced by WHD regardless of immigration status
- WHD has over 200 offices across the country
- More than half of all investigators are bilingual
  - Over 600 investigators speak another language other than English
  - 46 languages spoken
  - 461 investigators speak Spanish

# Laws Enforced by WHD

- Fair Labor Standards Act
- Family and Medical Leave Act
- Davis Bacon and Related Acts
- Service Contract Act
- Polygraph Protection Act
- Wage Garnishment
- Temporary Worker Programs

# Employee or Independent Contractor?

- There is no single test for determining whether a worker is an employee (like most workers) or an independent contractor under the FLSA.
- A worker is an employee if he or she is economically dependent on the employer, whereas a worker is an independent contractor if he or she is in business for himself or herself.



# Employee or Independent Contractor?

- The economic reality of the worker's relationship with the employer determines whether the worker is economically dependent on the employer (and therefore, an employee) or is in business for himself or herself (and therefore, an independent contractor).
- Courts generally apply a number of "economic realities" factors as guides when making the determination, but the factors applied can vary and no one set of factors is exclusive.

# Overarching Considerations

- No single “economic realities” factor determines whether a worker is an employee or an independent contractor.
- The six factors discussed in this presentation are not exclusive.
- Courts may consider additional factors that shed light on whether a worker is an employee or an independent contractor.

# **“Economic Realities” Factors**

We generally consider the following factors when determining if a worker is an employee or independent contractor:

- 1. The extent to which the work performed is an integral part of the employer’s business;**
- 2. Whether the worker’s managerial skills affect his or her opportunity for profit and loss;**
- 3. The relative investments in facilities and equipment by the worker and the employer;**
- 4. The worker’s skill and initiative;**
- 5. The permanency of the worker’s relationship with the employer;**
- 6. The nature and degree of control by the employer.**

# Misclassification

- Studies suggest that 10 to 30 percent of employers may misclassify their employees as independent contractors.

❖ *Source: USDOL Prevailing Wage Seminars (2017)*



# **DOL-WHD**

## **Investigation Process**

- Initial Conference/Tour Establishment
- Fact Finding
  - Interviews
  - Records Review
- Determination of Compliance
- Final Conference
- Remedies

# **WHD Fiscal Year 2018 Numbers**

*(All Acts)*

- 19,534 – Complaints registered;
- 28,397 – Cases concluded;
- \$304,914,114 – Back wages collected;
- 265,027 – Employees receiving back wages

■ Source: <https://www.dol.gov/whd/data>

# DOL Misclassification Enforcement Activity

- A painting and water-proofing company based in Sunrise, Florida was ordered to **\$86,530 in overtime back wages to 25 employees**. WHD investigators determined that the firm incorrectly classified the majority of its employees as independent contractors, paying them a straight-time rate for all hours worked, which resulted in overtime violations when the employees worked more than 40 hours in a workweek. (2019) <https://www.dol.gov/newsroom/releases/whd/whd20190226>
- Investigations by the U.S. Department of Labor's Wage and Hour Division resulted in the recovery of **\$5,579,939 in back wages and benefits owed to 993 employees** of nine subcontractors that provided power generator operation support for hurricane recovery efforts in Puerto Rico. Among other infractions, WHD investigators discovered violations that included to pay required wages to employees misclassified as independent contractors. (2018) <https://www.dol.gov/newsroom/releases/sol/sol20190211>
- After an investigation by USDOL-WHD, the U.S. Court of Appeals for the Sixth Circuit in Cincinnati, Ohio, issued an opinion affirming the Department's assertion that a security and traffic control services provider based in Louisville, Kentucky violated the overtime and recordkeeping provisions of the FLSA. WHD investigators determined that the employer incorrectly classified employees as independent contractors, leading to overtime violations when the employer failed to pay employees time-and-a-half for any hours they worked over 40 in a workweek. (2019) <https://www.dol.gov/newsroom/releases/whd/whd20190305-1>

*\* Source: DOL-WHD Press Releases on Misclassification*

<https://www.dol.gov/whd/media/press/whdprssToc.asp?topic=MIS#CurrentTopic>



# DOL Misclassification Resources

- DOL-WHD Misclassification Webpage  
<https://www.dol.gov/whd/workers/misclassification/>
- DOL 'Know Your Rights! – Misclassification (YouTube)  
<https://www.youtube.com/watch?v=BTUkKFYBdrU&feature=youtu.be>
- DOL-WHD Press Releases on Misclassification  
<https://www.dol.gov/whd/media/press/whdprssToc.asp?topic=MIS#CurrentTopic>
- E-laws – Independent Contractor  
<https://webapps.dol.gov/elaws/whd/flsa/docs/contractors.asp>
- 'Get the Facts – Misclassification Under the FLSA (Pamphlet)  
<https://www.dol.gov/whd/workers/Misclassification/misclassification-facts.pdf>
- DOL Employment Relationship Fact Sheet #13  
<https://www.dol.gov/whd/regs/compliance/whdfs13.htm>





# Additional DOL Resources

- Visit the WHD home page: [www.dol.gov/whd](http://www.dol.gov/whd)
- Frequently Asked Questions (FAQs)
- Fact Sheets
- Opinion Letters
- 1-866-4US-WAGE (1-866-487-9243)
- Call or visit the nearest Wage and Hour Division Office:  
WHD Offices