



Why Independent Contractor Misclassification Matters

Presentation to Minnesota Task Force on
Misclassification
September 2023

Presentation Overview

- **Independent Contractor (ICs) Generally**
- **Determining IC Status under Minnesota law**
 - **Definitions, factors**
- **Why IC Misclassification Matters**
 - **Impacts on workers**
 - **Impacts on businesses**
 - **Impacts on public programs**

What is an 'Independent Contractor'?



A business owner!
Has power to set prices, make investments and marketing decisions, build customer base, earn profits or losses.



Minnesota law

Minnesota's Fair Labor Standards Act's definitions

- “Employ” → “to permit to work.”
- “Employee” → an individual employed by an employer.

Minnesota's Worker's Compensation Law's definition

- “Employee” → any person who performs services for another for hire

Totality of the Circumstances Analysis

Factors indicating employment relationship include:

- Hiring entity has control over how work is performed;
- Work is essential part of the hiring entity's business;
- No opportunity for profit or loss;
- Hiring entity provides the workers with tools and materials;
- Worker does not offer the services she performs for hiring entity to general public;
- Worker is paid by the hour, week or month or piece rate.

Misclassification – What’s the big deal?

Employees → rights and protections

Independent Contractors → responsibilities & risks

Employee misclassification		
Labor Right or Protection	Employee	Independent Contractor
Right to organize and bargain collectively	Yes	No
Minimum wage and overtime protections	Yes	No
Access to unemployment insurance	Yes	No
Access to workers' compensation	Yes	No
Employer contributions to Social Security, retirement	Yes	No
Anti-harassment, discrimination protections	Yes	No

Who is Impacted?

- Occupational segregation, discrimination
- High violation industries → significant labor costs
 - ✓ Home care workers
 - ✓ housekeeping/janitors
 - ✓ Construction
 - ✓ Landscaping
 - ✓ Nail Salons
 - ✓ Ridehail & delivery drivers
- Disproportionately Black and/or immigrant workers

Lower Earnings, Higher Poverty

- IC income in low-paid industries is 50-66% of EEs in NY¹;
- DC study shows majority (60%) earn less than \$22k/yr²;

Occupation	W-2	W-2 & Benefits	IC
Home health	\$29,430	\$31,194	\$21,665-\$25,005
Landscaping	\$34,430	\$34,869	\$26,292-\$28,849
Janitors	\$29,760	\$30,140	\$22,698-\$24,909
Construction	\$48,210	\$52,398	\$35,670-\$42,221 ³

¹ Lina Moe and James A. Parrott, *The (Low) Wages of Misclassification: What One in 10 New York Workers Face*, NEW SCHOOL CTR FOR NEW YORK CITY AFFAIRS (Jun. 2022), <http://www.centrernyc.org/urban-matters-2/the-low-wages-of-misclassification-what-one-in-10-new-york-workers-face>.

² Corey Husak, *The Self-Employment Income Drop*, OFFICE OF REVENUE ANALYSIS OF WASHINGTON, D.C. (Dec. 2022), <https://ora-cfo.dc.gov/blog/self-employment-income-drop>.

³ See John Schmitt, Heidi Shierholz, et al., *The Economic Costs of Worker Misclassification*, ECON. POL. INST. (Jan. 25, 2023) (Table 1), <https://files.epi.org/uploads/The-economic-costs-of-worker-misclassification-1.pdf>.

Value of a job: employee v. independent contractor

Job value to a worker and to social insurance funds, by employment status

Construction workers, 2021 dollars

		Payroll employee	No compensation for health and retirement				With full compensation for health and retirement			
			Independent contractor	Cost to worker of independent contractor status		Independent contractor	Cost to worker of independent contractor status			
				Dollars	Percent		Dollars	Percent		
	<i>Value to worker of job that pays</i>									
	\$48,210									
A	<i>Regular pay</i>	\$43,129	\$43,129			\$51,006				
B	<i>Supplemental pay</i>	\$2,285	\$0			\$0				
C	<i>Paid leave</i>	\$2,796	\$0			\$0				
D	<i>Insurance and retirement benefits</i>	\$7,877	\$0			\$0				
E	<i>[Minus] Paperwork costs independent contractor</i>		\$1,016			\$1,158				
F	<i>[Minus] Worker contribution to Social Security, Medicare</i>	\$3,688	\$6,443			\$7,627				
G=A+B+C+D-E-F	<i>Net value to worker of job</i>	\$52,398	\$35,670	\$16,729	31.9%	\$42,221	\$10,177	19.4%		
	<i>Value to social insurance funds</i>									
F	<i>Worker contribution to Social Security and Medicare</i>	\$3,688	\$6,443			\$7,627				
H	<i>Employer contribution to Social Security and Medicare</i>	\$3,688	\$0			\$0				
I	<i>Employer contribution to Unemployment Insurance and Workers' Compensation</i>	\$2,031	\$0			\$0				
F+H+I	<i>Total payments to social insurance funds</i>	\$9,407	\$6,443	\$2,964	31.5%	\$7,627	\$1,781	18.9%		

Source: Median annual earnings of 47-0000 Construction and Extraction Occupations from Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2021. <https://www.bls.gov/oes/current/oes470000.htm>, accessed October 24, 2022.

Other Societal Costs

- ❑ Law-abiding businesses can't compete, race to the bottom
- ❑ Lost contributions to Unemployment Insurance programs
- ❑ Workers without benefits put pressure on public services
- ❑ Barriers to enforcement and atomized workforces, unable to take collective action

Agency enforcement is critical

- ❑ Huge impact on government revenue
- ❑ Forced arbitration leaves workers with no private remedy
- ❑ Understand emerging trends and target high-violation industries.
- ❑ Employers use apps and other technology to assign work and automate supervision and control.

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