



Employee or independent contractor? Understanding worker misclassification

Labor Standards Division
Wednesday, Apr. 15, 2026

Labor and Industry business areas

- Apprenticeship Minnesota
- Construction Codes and Licensing Division
- Labor Standards
- Minnesota OSHA (MNOSHA) Compliance
- MNOSHA Workplace Safety Consultation
- Projects and planning
- Workers' Compensation Division



Labor standards enforced by DLI

- Minnesota Fair Labor Standards Act
- Women's Economic Security Act
- Child Labor Standards Act
- Minnesota Prevailing Wage Act
- Wage Theft Prevention Act
- Other laws related to employment, wages, conditions, hours.



Think about it

How many lakes does Minnesota have?

Agenda

- **Misclassification**
 - Michelle Fournier, program administrator, Labor Standards





Misclassification

Topics



- Misclassification overview
- Misclassification in the construction industry
- Misclassification in all other industries

This presentation reflects the Minnesota state law requirements that are in effect as of the date of today's presentation, April 15, 2026.

What is misclassification?

When an employer fails to treat a worker who is their employee as an employee, that is misclassification.



Potential issues and impacts of misclassification

- Focus of this presentation: Labor standards (wage and hour issues, associated potential penalties for law violations)
- Other potential impacts not addressed here:
 - Tax issues
 - Unemployment insurance issues
 - Visit our website for links: dli.mn.gov/misclassification
 - [Learn more about the Intergovernmental Misclassification Enforcement and Education Partnership](#)

Misclassification is prohibited in all industries

Construction industry

Minn. Stat. § 181.723

The focus of this presentation

More information available:

<https://www.dli.mn.gov/misclassification-construction>



All other industries

Minn. Stat. § 181.722

More information available:

<https://www.dli.mn.gov/misclassification-general>

Who is covered by Minn. Stat. § 181.723?

- Applies to residential and commercial building construction and improvement services only.
- Does not apply to highway/heavy construction or most landscaping work.
- Applies to those performing or providing services for a business that are in the course of the business's trade, business, profession, or occupation



Think about it #1

In the previous slide, we mentioned how the Construction Industry misclass law doesn't apply to those who do highway/heavy construction, most landscaping work, or those who manufacture or sell products and materials.

Does that mean it is ok to misclassify those workers?

Workers are considered employees



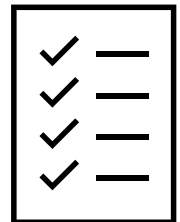
Workers performing or providing services for a business that are in the course of the business's trade, business, profession, or occupation are considered employees unless all 14 requirements are met

The 14 requirements focus on two questions:

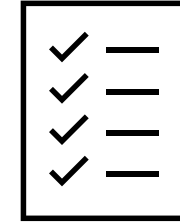
1. Does the worker operate as a **legitimate and separate business?**
2. Does a **legitimate contract** exist?

Legitimate and separate business (1-3)

1. established and maintained separately and independently from the person for whom the services are provided or performed;
2. owns, rents, or leases, equipment, tools, vehicles, materials, supplies, office space, or other facilities that are used to provide or perform the services;
3. provides, performs, or offers the same or similar services for multiple persons or to the general public;



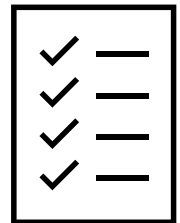
Legitimate and separate business (4)



4. Is in compliance with the following:
 - i. holds a federal employer identification number if required;
 - ii. holds a Minnesota tax identification number if required;
 - iii. has received and retained 1099s for income received for construction services if required;
 - iv. has filed business or self-employment taxes for construction services, if any, in the previous 12 months; and
 - v. has completed a W-9 to the person for whom the services were performed if required.

Legitimate and separate business (5-8)

5. is in good standing with the Minnesota Secretary of State, if applicable;
6. has a Minnesota Unemployment Insurance account, if required;
7. has obtained workers' compensation coverage, if required;
8. hold current business licenses, registrations, and certifications, if required by chapter 326B or sections 327.31 to 327.36;

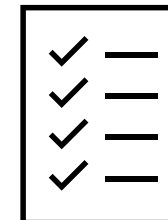


Think about it #2

Frank works only for Pete's Painting. Pete got the necessary paperwork together for Frank to start his own LLC and register with the Department of Labor. Frank buys paint and brushes from the local store using Pete's account, and uses Pete's sprayer, ladders, and stilts when needed.

Is Frank operating a legitimate and separate business?

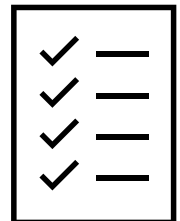
Legitimate contract (9)



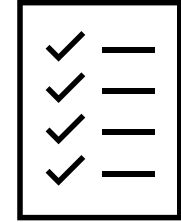
9. Operating under a written contract to perform specific services that:
 - i. is signed and dated by an authorized representative of both business entities;
 - ii. is fully executed no more than 30 days after the work commences (not required for change orders);
 - iii. identifies the specific services to be performed; and
 - iv. provides for compensation on a commission, per-job, or competitive bid basis and not on any other basis.

Legitimate contract (10-11)

10. submits invoices and receives payments in the name of the business entity.
Cash payments do not meet this requirement;
11. terms of the contract provide the engaged entity with control over the means of providing the services and the engaged entity exercises control in fact;



Legitimate contract (12-14)



12. incurs the main expenses and costs related to performing the services under the contract;
13. is responsible for the completion or failure to complete the services under the contract; and
14. may realize additional profit or suffer a loss under the contract if costs and expenses are greater or less than the contract price.

Think about it #3

Frank continues to work for Pete's Painting. Pete gives Frank a contract to sign for an upcoming house painting project. The contract says that Frank will complete the painting project in two weeks, that he is to track his hours, and that Pete will pay Frank \$40 an hour.

At the end of the project, Frank emails Pete with the hours he worked, and Pete gives Frank a check, made out to Frank.

Does a legitimate contract exist?

Who is covered by Minnesota Statutes § 181.722?



- Everyone not covered by the construction law is covered by this law.

Workers are usually considered employees

- Workers who work for an employer are usually considered employees of that employer
- To determine if a worker can properly be considered an independent contractor, look to factors found in Minnesota Administrative Rules
 - Unemployment: Minnesota Administrative Rule 3315.0555
 - Workers Compensation: Minnesota Administrative Rules Chapter 5224
 - General Rules: 5224.0320 and 5224.0330

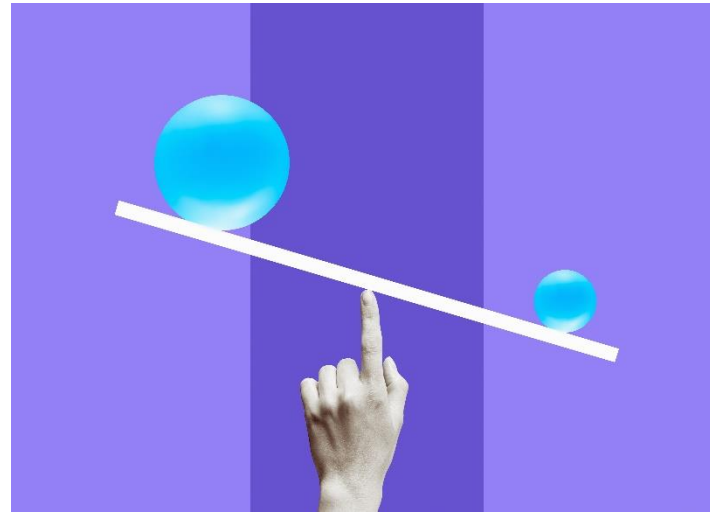
Minnesota Administrative Rule 3315.0555

- A. The right or the lack of the right to control the means and manner of performance;
- B. the right to discharge the worker without incurring liability for damages;
- C. the mode of payment;
- D. furnishing of materials and tools; and
- E. control over the premises where the services are performed.

Minnesota Administrative Rules 5224.0330 & 5224.0340

- Authority over assistants
- Compliance with instructions
- Personal performance
- Training
- Set hours of work
- Availability to the public
- Compensation
- Substantial investment
- Responsibility
- Services fundamental to business

No one single factor controls



- If an employer chooses to engage with independent contractors, they should evaluate and weigh the factors to make sure they are compliant.
- There is no one single factor which determines if someone can be properly be classified as an independent contractor.

Think about it #4

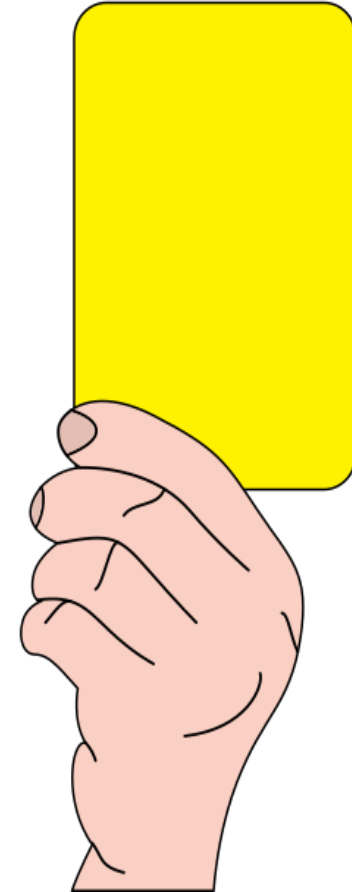
If your employer gave you a 1099 tax form at the end of the year, does that mean that you are properly classified as an independent contractor?

What activities are prohibited under the law?

- Failing to classify, represent, or treat an employee as an employee in accordance with any applicable local, state, or federal law.
- Failing to report or disclose an employee when required to do so under law.
- Requiring or requesting that an employee enter into an agreement or complete a document that misclassifies, misrepresents, or treats the individual as an independent contractor or otherwise does not reflect that the individual is an employee.

Potential damages and penalties for employers

- Compensatory damages to misclassified workers
 - Back wages
 - Any costs and expenses incurred from misclassification
- Penalties for misclassified workers, prohibited activities, obstructing
- Department must consider factors before issuing penalties, including, but not limited to:
 - Willfulness, gravity of the violation, past violations, number of violations, any economic benefit gained by person who committed violations



Potential lost opportunities for misclassified workers

- Misclassified workers often lose out on things guaranteed to employees
- Minnesota law provides Minnesota employees with the right to:
 - Be paid at least the minimum wage
 - Be paid for all hours worked
 - Overtime pay
 - Earned sick and safe time
 - Paid family and medical leave
 - Receive earnings statements with your pay rate and hours, so you can know you are paid correctly
 - Be paid on a regularly scheduled pay day

Best practices and resources

- Learn more at dli.mn.gov/misclassification
- Keep any records you relied on to ensure compliance
- Ensure contracts are written; accurately reflect relationship and obligations
- Document contract negotiations
- Check registration status at dli.mn.gov/license-and-registration-lookup

Misclassification Resources

- Worker misclassification page: dli.mn.gov/misclassification
- General misclassification: dli.mn.gov/misclassification-general
- Construction misclassification: dli.mn.gov/misclassification-construction
- License and registration lookup: dli.mn.gov/license-and-registration-lookup
- [Learn more about the Intergovernmental misclassification enforcement and education partnership](#)

Q&A #1

- If the entity I hired or engaged with has their own LLC, is that enough to show that they really are an independent contractor and not an employee?
- If the hired entity has their own LLC that might be an indication that they are operating as a business entity. But having an LLC is not enough, on its own, to show that they meet the legal requirements to be classified as an independent contractor.

Q&A #2

- What kind of records does an employer need to keep to comply with these laws?
- The laws don't require employers to collect any specific records. The Department does suggest, as a best practice, that businesses do keep records and documentation.
- The construction misclass law does require that contractors retain any information and documents they based any independent contractor determination on for at least three years.

Q&A #3

- Can I email the Department of Labor and Industry with my specific situation, and ask you to tell me whether the person or entity I hired should be classified as an employee or an independent contractor?
- The Department can provide the laws and general information, but can't provide legal advice or give advisory opinions.

Q&A #4

- I am a homeowner and hired someone to do repairs on my home. Is that person my employee now? Do I have to make sure they meet the 14 requirements?
- The independent contractor test in Minn. Stat. 181.723 subd. 4 only applies when you have engaged someone to provide or perform services that are *in the course of your trade, business, profession, or occupation*.

Q&A #5

- I am an independent contractor. I normally offer my services out to the general public, but currently I'm so busy doing work for one particular business that I have decided to stop advertising and not take new jobs. Does that mean that I can't be considered an independent contractor?
- It is true that the construction misclass law has a requirement that an independent contractor must provide, perform or offer to provide or perform services for multiple entities or the general public. The general misclass law also has a factor involving being available to the general public. However, this does not require an independent contractor to take jobs you do not want or can't accommodate. Being free to accept jobs from others at your own discretion, and solicit such jobs if you choose, may satisfy this requirement.

Learn more

- Stay up to date with the Labor Standards by signing up for the “Wage and Hour Bulletin.”
- To sign up, visit dli.mn.gov/bulletin or scan the QR code.
- Contact Labor Standards at 651-284-5075 or dli.laborstandards@state.mn.us.



Wage and Hour Bulletin



Thank you for your participation

Scan the QR code or click [here](#) to submit the survey form.



Upcoming webinars



April 22: Prevailing wage on public projects: What workers and employers need to know



May 6: Youth at work -- Understanding Minnesota's youth employment laws



To register, visit dli.mn.gov/events.

Thank you

Contact Labor Standards at 651-284-5075 or dli.laborstandards@state.mn.us.