

# **WHAT YOU NEED TO KNOW ABOUT MISCLASSIFICATION**

Millions of workers are told that they can live the American Dream by owning a small business, and many companies label their drivers “Independent Contractors” instead of “Employees.”

But what happens when workers are misclassified as independent contractors? When they file 1099s and are told they are entrepreneurs but are actually treated like an employee by the Boss?

Employers frequently do this to avoid:

- Paying Unemployment insurance
- Paying Workers’ Compensation and temporary disability
- Paying Social Security Taxes
- Paying Minimum Wage and complying with Overtime Laws

Workers in this situation lose out on all kinds of benefits including:

- Healthcare and Retirement benefits
- Workplace protections like health and safety laws and equal opportunity laws
- Rights to job-protected family and medical leave
- Rights to be re-employed after returning from military service

Worker Misclassification is rampant in many industries including the parcel delivery industry and construction. This fraud is so widespread that the Federal Government has committed millions of dollars to the Department of Labor to crack down on it.

In New York, a misclassification Task Force has been established to investigate employers who are trying to skirt payroll expenses.

If you think you have been misclassified by your employer and you want to file a complaint, you can contact the New York State Task Force in the Department’s Fraud Unit at 1-866-435-1499. You can remain anonymous.

You can also contact Teamsters Local 295 for more information at \_\_\_\_



## **Fact vs. Fiction: Setting the Record Straight on Misclassification**

**Fiction:** As independent contractors, workers get to live the American dream by becoming small-business owners.

- **Fact:** In reality, misclassified workers lose basic job protections, health care and retirement benefits, and are paid up to 25% less than their properly-classified counterparts.

**Fiction:** The Worker Misclassification campaign will eliminate all independent contractors.

- **Fact:** The campaign is only targeting 5 million misclassified workers currently considered independent contractors, but recognizes that there are an additional 10 million legitimate independent contractors – more than 7% of the nation's total workforce.

**Fiction:** Worker misclassification only exists in the construction industry.

- **Fact:** Misclassification is used across all industries, including the construction, real estate, motion picture, and parcel delivery industries. In fact, many well-known Fortune 500 companies use this practice, such as FedEx Ground, Microsoft, and Sara Lee.

**Fiction:** The Worker Misclassification campaign will force small businesses to close, costing more workers to lose their jobs during the current recession.

- **Fact:** Cracking down on misclassification will ensure a level playing field among competitors. Employers who play by the rules are currently taxed up to 30% in additional worker-related expenses, like unemployment insurance taxes and workers' compensation premiums, because employers who misclassify employees avoid paying into these pools.

**Fiction:** The Worker Misclassification campaign is unnecessary because the practice is already illegal in many states.

- **Fact:** In some states, worker misclassification is illegal, but not everywhere. Also, states must make a commitment to use resources to enforce misclassification laws.

**Fiction:** Enforcing worker misclassification laws will be too costly for state governments, especially during tough economic times when those funds would be better used elsewhere.

- **Fact:** A small state appropriation today will reap huge financial rewards in the future. In 15 states in which the issue has been studied, cracking down on misclassification would inject substantial future revenue into income and unemployment tax systems as well as in workers' compensation premiums. Additionally, misclassified workers will once again be protected by basic job protection rights.

## **Misclassification: The Illegal (and Hidden) Tax on our Communities**



### **What is "misclassification"?**

- Employers purposely misclassify employees as "independent contractors" to skirt payroll expenses and other worker-related expenses to the state and federal governments while retaining huge financial windfalls.

### **How does misclassification hurt employees?**

- Misclassified employees lose out on national labor laws that protect employees in the workplace, like worker's compensation, unemployment insurance, healthcare and retirement benefits.
- Misclassified workers are forced to pay for safety net benefits, like Social Security and Medicare, and other expenses in which employers should be responsible.
- Misclassified employees make **up to 25% less** than properly classified employees in the same position.

### **How does misclassification hurt employers who play by the rules?**

- While employers misclassifying employees retain huge financial windfalls, employers who properly classify employees face a **30% tax** to cover these tax cheats.

### **How does misclassification hurt states?**

- Misclassified employees only report 68% of annual income while properly classified employees report 99% of income.
- Misclassification costs states **hundreds of millions of dollars annually** in unemployment insurance funds.
- Misclassification ranges up to 19% in individual states across the country, costing states hundreds of millions of dollars each year in uncollected income taxes.

### **Misclassification: A growing problem?**

- More than **5 million employees are misclassified** in the United States – a 7% increase since 2004 - costing the federal government **\$4.7 billion annually**.
- Companies like Federal Express, Merrill Lynch, Time Warner and Sara Lee, have been cheating the system for years, illegally saving millions of dollars. FedEx is currently being investigated by the IRS which could end up costing the company **\$1 billion in taxes and penalties**.
- Misclassification crosses into all industries – parcel delivery services, construction, real estate, stock brokers, insurance agents, and the entertainment industry.

### **What are states doing to stop this illegal, hidden tax on our communities?**

- Six states established misclassification task forces to investigate the practice in their state through executive orders or legislation.
- Twelve states introduced legislation to investigate misclassification.
- More than thirty states are investigating FedEx Ground's misclassification of employees.