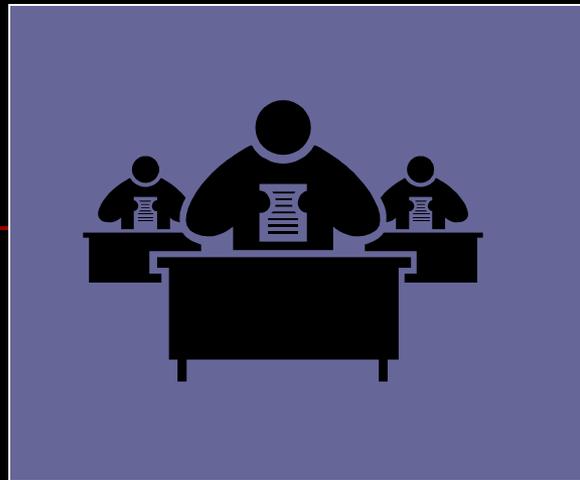


Hiring Workers: General Overview



Business and Labor Interim Committee

July 18, 2007

Prepared by the Office of Legislative Research and General Counsel

Context

Context

- Company
 - Small Business (49 employees)
 - Sole proprietorship
 - Manufacturer and retailer
 - Headquartered in Utah



Context

- Worker 1 (Joe Doe)
 - Delivery person (company truck/scheduled through dispatcher)
 - Immigrant with green card
 - Paid \$15 per hour
 - Averages 50 hours per week



Context

- Worker 2 (Jane Doe)
 - Office worker (works from home)
 - Neighbor friend
 - Paid \$200 per week
 - Part-time, hours not tracked



Hiring

Verifying Employee Eligibility

- I-9
- Basic Pilot Program



Verifying Employee Eligibility

■ I-9 ●

■ Basic Pilot Program

- All employees, citizens and noncitizens, **3 business days from date employment begins**
- Employee and employer each completes a part
- Not submitted but kept on file
- Certify that: *“I have examined the document(s) presented [and the] document(s) appear to be genuine and to relate to the employee named, that the employee began employment on [date] and that to the best of my knowledge the employee is eligible to work in the United States.”*
- Antidiscrimination Issues

Source: Form I-9 (Rev. 05/05)

Verifying Employee Eligibility

■ I-9

■ Basic Pilot Program

- The Employment Eligibility Verification Program (EEV)
- Internet-based system operated by Dept of Homeland Security, U.S. Citizenship & Immigration Services (USCIS)
- **Voluntary** – As of 12/06 >12,000 employers participated
- Register on line and enter into a MOU
- **Only verifies a new hire**
- Submit information obtained from I-9 – 3 day deadline
- **Antidiscrimination issues**

Source: M-655, UCIS (01/07)

Complying with Obligations

- Withholding
- Unemployment
- Social Security, etc.
- Workers' compensation
- Labor standards
- ERISA
- Workplace safety
- Others



Employee?

Classifying the worker

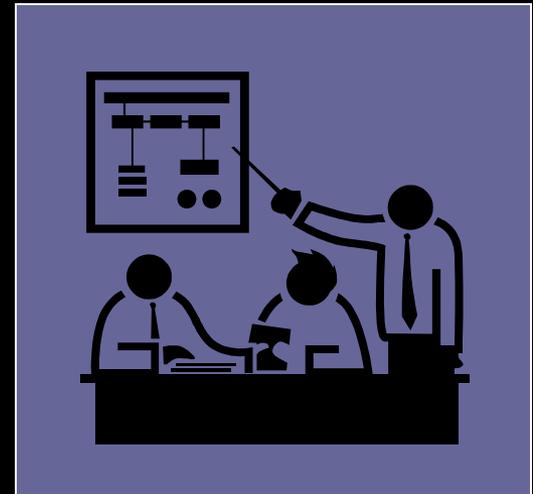
■ Employee?

- Common law
- Statutory

■ Contingent worker?

- Independent contractor
- Others

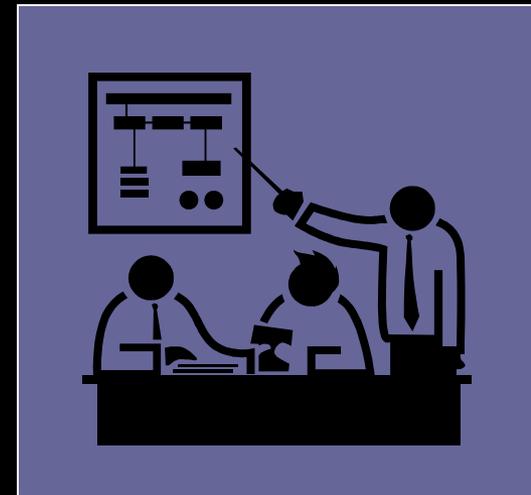
- Temps, contract company workers, day laborers, on-call workers, self-employed workers, part-time



Sources: <http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>; Employment Arrangements-Improved Outreach Could Help Ensure Proper Worker Classification, GAO-06-656 (7/06); and Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, for DOL (2/00)

Classifying the worker

- Misclassification
 - What?
 - Why?
 - How?
 - Who's impacted?



Classifying the worker

■ Misclassification

■ What?

■ Why?

■ How?

■ When?

• Multiple tests - *e.g.*:

- Common law
- IRS 20 factors (Section 530 relief)
- ABC test
- Economic realities test
- AC test
- ABC + 123 test
- Others?

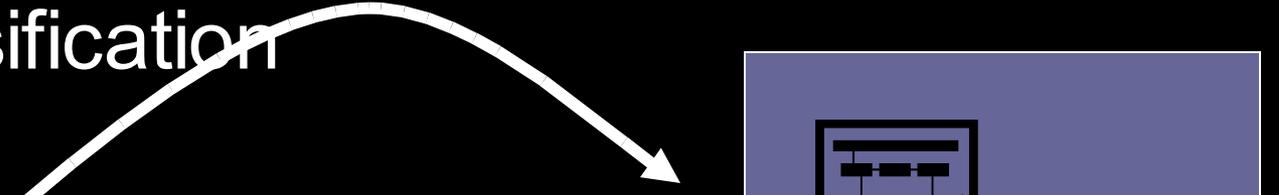
Control v.
Right to Control

Source: Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, for DOL (2/00)

Classifying the worker

■ Misclassification

- What?
- Why?
- How?
- Who's

- 
- Various reasons for both employer and employee
 - 2000 survey: Number one reason for using ICs or misclassifying is workers' compensation and workplace injury disputes
 - 2000 survey: Nearly 84% of ICs preferred alternative arrangement to the more traditional arrangement
 - Voluntary/involuntary, intentional/unintentional, *e.t.c.*
 - Economic/social environment conducive to IC growth
 - Different profile for different industries

Classifying the worker

■ Misclassification

- What?
- Why?
- How?
- Who's

“The construction industry was the industry frequently cited by interviewees as most likely to use ICs, contain the highest incidence of misclassification, or as one that lures workers into becoming ICs.”

Source: Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, for DOL (2/00)

- Vari
- Vol
- Eco
- growth
- Different profile for different industries

Source: Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, for DOL (2/00)

Classifying the worker

■ Misclassification

- What?
- Why?
- How?
- Who's

“Responsible employers may misclassify workers because they are unclear or confused about how to apply complex, inconsistent and varying standards. . . . Other employers intentionally misclassify workers, assuming the risk of incurring penalties, as a strategy to significantly cut labor costs, limit their liability and gain an unfair competitive advantage.”

Source: The Cost of Worker Misclassification in New York State, Cornell University, (2007)

- Vol
- Eco
- growth
- Different profile for different industries

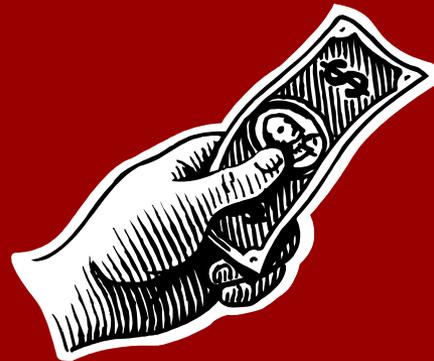
Source: Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs. for DOL (2/00)

Classifying the worker

■ Misclassification

- What?
- Why?
- How?
- Who's

- 1099'd
- Cash – the underground economy
- Others



Classifying the worker

■ Misclassification

- What?
- Why?
- How?
- Who's impacted?



Examples include:

Competitors

Employees

Government revenue

Government programs



Recent State Studies

Prevalence of Misclass.	Low	Mod.	High
All Industries (9 states)	5-10%	13-23%	29-42%
All Industries (United States)		15%	
All Industries (Mass)	13%	19%	
All Industries (Maine)	11%		
All Industries (Illinois)		7.5%	
Construction Sector (United States)		20%	
Construction Sector (Mass)	14%	24%	
Construction Sector (Maine)	14%		

Source: The Economic Costs of Employee Misclassification in the State of Illinois, University of Missouri-Kansas City (2006)

Recent State Studies



Illinois Estimates

Lost Taxes

UI \$39.2M per year ave (\$2M in construction)

Income \$124.7M per year ave (\$8.9M in construction) to
\$207.8M per year ave (\$14.8M in construction)

Premiums not Paid

Workers' Comp \$95.9M per year ave (\$23.2M in construction)

Source: The Economic Costs of Employee Misclassification in the State of Illinois, University of Missouri-Kansas City (2006)

Recent State Studies



Maine Estimates

Lost Taxes

UI \$314,319 per year approx in construction

Income \$4.3M per year approx in construction

FICA \$10.3M nearly per year in construction

Premiums not Paid

Workers' Comp \$6.5M per year approx in construction

Source: The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, Harvard (4/05)

Recent State Studies

New York Study Recommendations

Clarify guidelines

Presume employee status

Extend employee protections to ICs

Provide resources for enforcement

Promote information sharing

Conduct high profile enforcement

Extend outreach/education efforts



Source: The Cost of Worker Misclassification in New York State, Cornell University (2007)

Recent State Efforts

New Jersey

“Gov. Jon S. Corzine (D) has directed Treasury and Labor Department officials to leverage their enforcement powers by working together to identify and penalize employers that avoid making unemployment and disability insurance and gross income tax withholding payments to the state for all their employees.”



Source: Two New Jersey Agencies to Crack Down on Independent Contractor Misclassification, Construction Labor (BNA 4/06)

Recent State Efforts

Washington

“Creates a joint legislative task force to review the underground economy in the construction industry; provides that underground economy means contracting and construction activities in which payroll is unreported or underreported with consequent nonpayment of payroll taxes to federal and state agencies including nonpayment of workers’ compensation and unemployment compensation.”



Source: 2007 Bill Tracking WA S.B. 5926

Recent State Efforts

California

California Assembly is considering legislation that “prohibits willful misclassification of employees as independent contractors to avoid existing law which relates to minimum wages, overtime compensation and standards for working conditions for the protection of employees applicable to an employment relationship.”



Source: 2007 Bill Tracking CA S.B. 622

Recent Proposals by Advocates

- Models (in addition to study bills) include:
 - Laws creating a presumption of employee status
 - Specific laws addressing industries with worst abuses
 - Enhanced data collection and audit capabilities with funds for enforcement and inter-agency collaboration or task force
 - State unemployment tax protections to combat “SUTA dumping”
- Priorities include:
 - Private right of action
 - Anti-retaliation protections for workers
 - “Hot-goods” enforcement ability
 - Monetary damages in amounts likely to deter future violations
- Warnings include concerns with:
 - “Simplifying” the myriad of definitions
 - Criminal penalties or violations

Source: Combating Independent Contractor Misclassification in the States: Models for Legislative Reform (12/05)

Recent Proposals by Advocates

- Models

- Law
- Spe
- Enh
- enfo
- Stat
- dum

- Priorities

- Priv
- Anti
- “Hot
- Mor

- Warnings

- “Simplifying” the myriad of definitions
- Criminal penalties or violations

“Therefore, Congress should recognize that encouraging independent contractors is consistent with our nation’s economic heritage and social philosophy. Public policy should be built around the presumption that Americans should be encouraged to start, own, and manage a business, not the presumption they are ‘misclassifications.’”

Source: Testimony of John Stagaj, President and General Counsel of the Small business Legislative Council, before the House Committee on Ways and Means (5/07)

Source: Combating Independent Contractor Misclassification in the States: Models for Legislative Reform (12/05)

Joe is Injured

Jane is Terminated

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