

# HELP ELIMINATE EMPLOYERS INAPPROPRIATELY MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS

## **Position:**

NECA seeks congressional support for the Taxpayer Responsibility, Accountability, and Consistency Act (H.R. 3408), and its companion Senate bill S. 2882. This legislation confines the use of independent contractor classification to those individuals whose legitimate purposes and definitions are set out by current Internal Revenue Service rules and tests. NECA opposes any legislation that protects unscrupulous employers who knowingly misclassify their workers or expands the definition of “independent contractor.”

## **Issue:**

Misclassification occurs when an employer improperly classifies a worker who should be classified as an employee as an “independent contractor.” Misclassification allows the employer to avoid withholding and paying taxes and fringe benefits on the employee that would be required if he were correctly classified as an employee.

Misclassification is a serious and growing problem in the construction industry. Some estimates suggest that employers can save 30% of payroll expenses by misclassifying. In a competitive bid industry like construction, misclassifying provides an unfair competitive advantage for those “gaming the system.” Lawful employers get underbid by employers who misclassify.

## **Status:**

**House:** Congressman Jim McDermott (D-WA) introduced the “Taxpayer Responsibility, Accountability, and Consistency Act of 2009” or H.R. 3408 on July 30, 2009 with 38 co-sponsors.

**Senate:** Senator John Kerry (D-MA) introduced the “Taxpayer Responsibility, Accountability, and Consistency Act of 2009” or S. 2882 on December 15, 2009 with 8 co-sponsors.

H.R. 3408/S. 2882 would:

- repeal an existing safe harbor and replace it with a safe harbor that will provide clear guidelines to taxpayers for classification purposes, and
- require all payments made by a business to a corporation for services that exceed an annual value of \$600 will be reported to the IRS, and
- increase penalties for failure to file an accurate return of up to \$250 for each return and \$500 per return for those employers displaying intentional disregard, and
- require the Treasury to study the extent to which misclassification occurs, and
- shield employers from tax liability for past misclassification. However, employers would be required to prospectively reclassify misclassified employees.

## **Key Points:**

- The unionized sector maintains a system of apprenticeship training, health and welfare, pension benefits, and career advancement training for those who are compensated and classified correctly as employees; allowing the misclassification of workers threatens to degrade the quality of workforce standards.
- Employers who misclassify their workers reap substantial savings and gain unfair competitive marketplace advantages by avoiding payment of Social Security and Medicare taxes, payment of federal and state unemployment insurance taxes, and payment of workers’ compensation premiums.
- Workers who should be classified as employees are cheated out of benefits, including employer social security contributions, health care, and workmen’s compensation.
- Misclassification costs the government and the taxpayers, at all levels, substantial, uncollected tax revenues and significantly contributes to the “tax gap.” Governments lose Social Security taxes, unemployment insurance taxes, and income taxes. Less revenue means less money that is available for vital federal, state and local services and programs.



## National Electrical Contractors Association

NECA is the voice of the \$120 billion industry responsible for bringing lighting, power, and communications to buildings and communities across the United States. NECA’s national office and 119 local chapters advance the electrical contracting industry through advocacy, education, research, and standards development.

For more information, visit [www.necanet.org](http://www.necanet.org).

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