



Prevent Misclassification of Employees as Independent Contractors

Background:

Employee misclassification occurs when an employer improperly classifies a worker as an “independent contractor” instead of an employee, often for the purpose of avoiding the payment of the required taxes and benefits. Consequently, these employees are not provided benefits, including employer social security contributions, health care, and worker’s compensation. In addition to robbing workers of their rights, this practice amounts to payroll fraud and tax evasion. In a competitive-bid industry like construction, misclassifying provides an unfair competitive advantage for those who exploit the loophole.

Key Points:

- *Misclassification Costs the Government and the American Taxpayer Substantial Tax Revenues.* Income earned by independent contractors is not subject to withholding requirements and has led to cases of uncollected Social Security taxes, unemployment insurance taxes, and income taxes. The Government Accountability Office studied a series of IRS audits and uncovered \$751 million in uncollected tax assessments from 483,000 misclassified workers.
- *Compliant Employers Are Forced to Compete in The Marketplace Against Unlawful Employers Who Cut Their Labor and Administrative Costs.* Employers who misclassify their workers reap substantial savings and gain unfair competitive marketplace advantages by avoiding payment of Social Security and Medicare taxes, federal and state unemployment insurance taxes, and workers’ compensation premiums. Furthermore, misclassification results in lost revenue for the Treasury and in the Social Security, Medicare, and Unemployment Insurance Trust Funds.
- *Misclassifying Workers as Independent Contractors Excludes Them from Coverage Under Laws Designed to Protect Them.* Unfortunately, it may be in the interest of some unscrupulous employers to deliberately misclassify a worker as an independent contractor to avoid the burden associated with these protective laws. Such protections include the Fair Labor Standards Act, which provides minimum wage, overtime pay, and child labor protections. Additional laws designed to protect employees include the *Family Medical Leave Act*, *Occupational Safety and Health Act*, and the *National Labor Relations Act*. Misclassified workers may also lose access to employer provided benefits such as health insurance coverage and retirement benefits.

NECA Asks:

- Support legislation that would clarify the employment status of service providers in the construction industry and ensure that full-time employees are no longer misclassified.