



Misclassification of Employees as Independent Contractors Under the Fair Labor Standards Act



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

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1-866-4-US-WAGE

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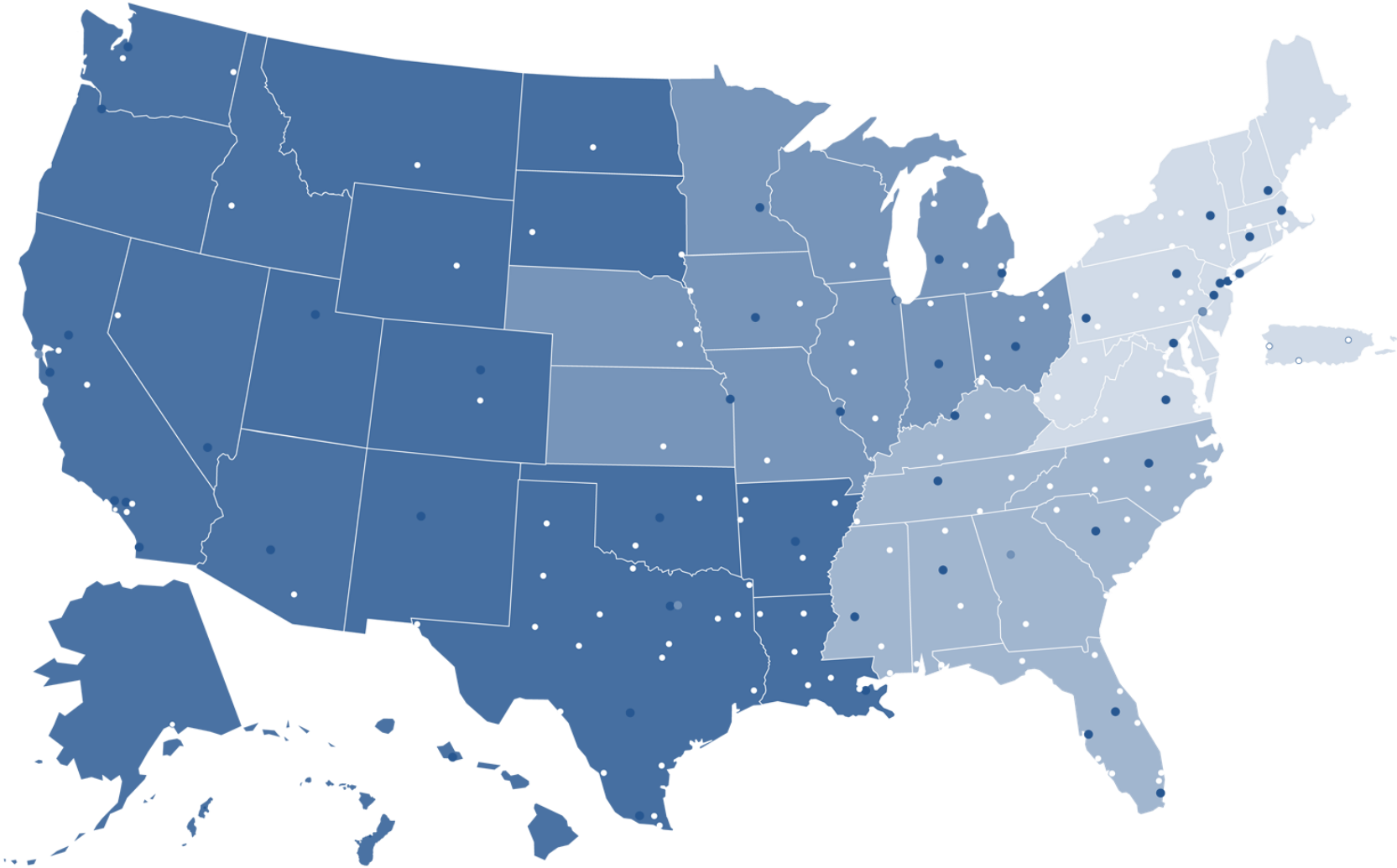


Protecting Your Rights

Enforcement Regardless of Status

- Labor laws cover workers regardless of immigration status
- Protections apply regardless of immigration status
- WHD does not ask workers about their immigration status

Helping Workers Across the Country



Ensuring Fair Pay



Education Promotes Compliance

Education and outreach for workers:

dol.gov/agencies/whd/workers

Education and outreach for employers:

dol.gov/agencies/whd/employers





What We Do

Promoting Compliance and Worker Voice

- **Protect 165 million workers at 11 million workplaces nationwide**
- **Address wage theft and labor exploitation**
- **End misclassification** that denies workers access to basic rights and benefits
- **Prevent retaliation** by protecting workers who assert their rights
- **Prioritize low-wage workers** and underserved communities facing structural inequities



Why Misclassification Matters

What is misclassification?

Misclassification occurs when:

- A worker is an employee under the law but is treated as an independent contractor by the employer.
- The FLSA applies whenever there is an employment relationship between an employee and an employer.

Impacts of Misclassification

Misclassification . . .

- Denies employees the right to minimum wage, overtime pay, and other protections
- Creates tax burdens on misclassified workers
- Leads to tax revenue loss for governments
- Creates unfair competition for responsible companies that comply with the law

Addressing Inequity

Ending misclassification helps combat historical inequities faced by women, immigrants, people of color and workers with disabilities.

Where Misclassification Occurs

Misclassification can occur in any industry.











Understanding Worker Classification Under the FLSA

Are You An Employee Or An Independent Contractor?



Indicators of an Employee	-OR-	Indicators of an Independent Contractor
Working for someone else's business		In business for themselves
Generally, can only earn more by working additional hours		Can increase profit through business decisions
Typically uses the employer's materials, tools and equipment		Typically provides their own materials, tools and equipment and uses them to extend market reach
Typically works for one employer or may be prohibited from working for others		Often works with multiple clients
Continuing or indefinite relationship with the employer		Temporary relationship until project completed
Employer decides how and when the work will be performed		Decides how and when they will perform the work
Employer assigns the work to be performed		Decides what work or projects they will take on

These are general concepts. All relevant facts about the work relationship should be considered as a whole, and the existence or absence of any particular fact does not require a particular outcome.



Economic Reality

How is Classification Analyzed?

The economic reality of the worker's relationship with the employer is examined to determine economic dependence

- WHD regulations include six factors that guide the analysis of the economic reality.
- no factor or set of factors among these six has a predetermined weight,
- the totality of the circumstances of the working relationship should be considered
- This analysis is the same analysis courts apply.

Classification under the FLSA

Under the Fair Labor Standards Act:

- A worker is an employee if they are economically dependent on the employer for work
- A worker is an independent contractor if they are in business for themselves.



Economic Reality Factor #1

Opportunity for Profit and Loss Depending on Managerial Skill

- Does the worker earn profits or suffer losses through their own independent effort and decision making?



Economic Reality Factor #2



Investment by the worker and the potential employer

- **Has the worker made investments that are capital or entrepreneurial in nature?**

Economic Reality Factor #3

Permanency of the Work Relationship

- **What is the nature and length of the work relationship?**

Economic Reality Factor #4

Nature and degree of control

- **Who controls the economic aspects of the working relationship?**



Economic Reality Factor #5

Extent to which work performed is an integral part of the employer's business

- Is the work critical, necessary, or central to the potential employer's principal business?**



Economic Reality Factor #6

Skill and Initiative

- Does the worker use their own specialized skills together with business planning and effort to perform the work and support or grow the business?





Possible Misclassification

Possible Misclassification

A worker misclassified as an independent contractor by an employer may really be an employee even if the worker:

- Agrees to be paid by cash or by check, on the books or off the books.
- Receives a 1099 tax form.
- Signs an independent contractor agreement.
- Is registered as an independent contractor or other business entity under state law.
- Agrees with the employer that he or she is an independent contractor.

Possible Misclassification (cont'd)

Some employees are misclassified as an independent contractor based on where they work or the type of work they perform.

For example:

- Off-site workers misclassified because they work at multiple job-sites.
- Teleworkers misclassified because they work from home.
- Highly skilled workers, such as computer programmers, misclassified because of their specialized skills.
- Construction workers misclassified because they purchase their own common tools of the trade.

Additional Resources on Employee Classification

- [Final Rule: Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#)
- [Fact Sheet 13: Employee or Independent Contractor Classification Under the Fair Labor Standards Act \(FLSA\)](#)
- [Small Entity Compliance Guide](#)
- [Frequently Asked Questions](#)



How We Can Help

How to File a Complaint

- Complaints can be submitted by phone or in person.
- Complaints are confidential.
- WHD does not ask workers about their immigration status.
- There is no fee to file a complaint with WHD

1



Gather Information

Gather [information you will need to file your complaint](#). While [third-party complainants](#) may not be able to provide all the information needed, the more information made available the better we can address

concerns raised.

2



Decide How to File

[Reach out to us online](#) or call 1-866-487-9243.

3



We Work with You

We will work with you to answer your questions and determine whether an investigation is the best course of action.

Complaint Intake Information

Employee's name

- Contact information
- Address and phone number
- Employee's duties/work
- Circumstances or actions that caused potential violation of the law
- Copies of pay stubs or personal hours worked records if available

Employer's name

- Point of contact
- Address and phone number

This information is not required, but helps develop the case.

Who May File a Complaint?

- Current and former employees
- Parent/Guardian
- School officials
- Other employers
- Advocacy groups
- Other agencies

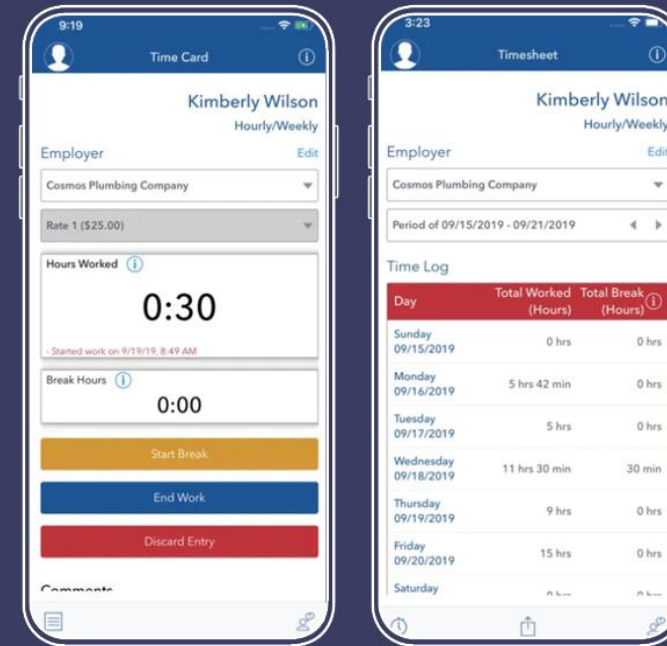


DOL-Timesheet App

UPDATED

DOL-Timesheet App

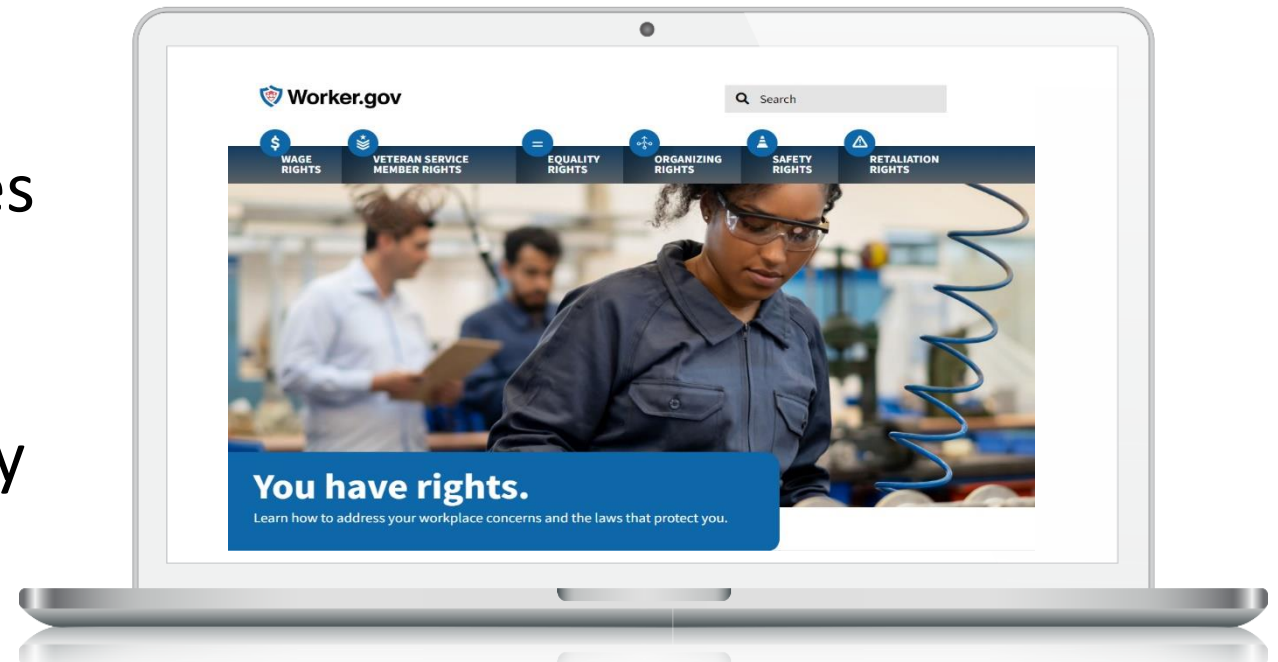
- ✓ For workers *and* employers
- ✓ Calculates pay automatically
- ✓ Records work hours simply and quickly
- ✓ Available for iOS and Android



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Additional Online Resources

- [U.S. Department of Labor](#)
- [Worker.gov](#)
- [Wage and Hour Division](#)
 - [Workers Owed Wages](#) provides online access for workers and advocates to search for unclaimed wages recovered by WHD.



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