

Employment Case Studies:

Today's Misclassifications of Employees as Independent Contractors

Provided by [B_Officialname]

The BenefitWorks
Benefits at work for you.

Introduction

When an employee is misclassified as an independent contractor instead of an employee, they are denied crucial benefits and standard labor protections under the Fair Labor Standards Act (FLSA). The FLSA, enforced by the U.S. Department of Labor (DOL) Wage and Hour Division (WHD), establishes standards for recordkeeping, overtime pay, minimum wage and youth employment in the private sector and for federal, state and local governments.

This article provides an overview of the key differences between employees and independent contractors. It also highlights case studies of real-world instances where employers were found to be in violation of FLSA regulations over independent contractor misclassifications and explains how these employers could have avoided such infractions. Employers should use these case studies to learn from the mistakes of other organizations and ensure the proper designation of all workers.

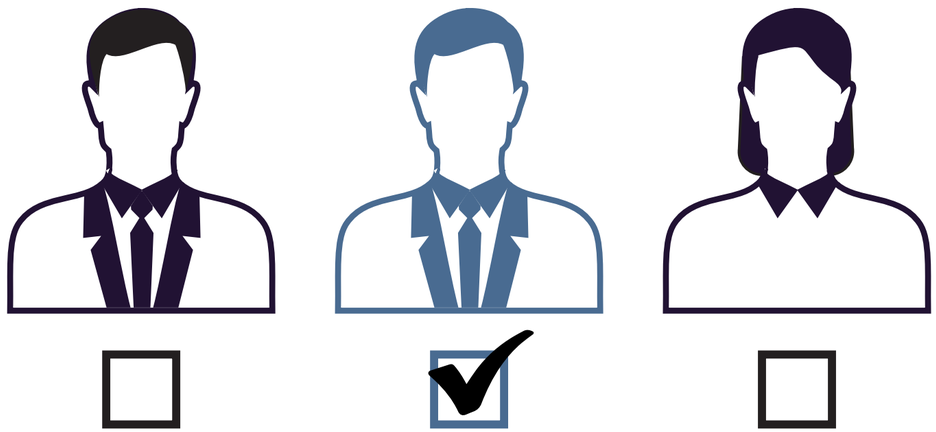


Critical Differences Between Employees and Independent Contractors

Understanding the difference between independent contractors and employees under the current FLSA guidelines is crucial to avoid violations. Generally, a worker is an employee when an employer exercises greater control over how their work is completed. On the other hand, independent contractors are distinguished by the freedom to complete a job at their discretion.

It is the role of the WHD to determine if an employee has been misclassified as an independent contractor and is therefore illegally denied benefits, wage and labor standard protections defined by the FLSA.

The DOL provides the **following guidance** regarding the differences between employees and independent contractors:



Employee	Independent Contractor
Works for someone else's business	Runs their own business
Receives hourly, salary or piece rate pay	Receives pay upon completion of the project
Uses employer's materials, tools and equipment	Provides own materials, tools and equipment
Typically works for one employer	Works with multiple clients
Continues relationship with the employer	Maintains a temporary relationship with the employer until the project is completed
Is instructed by the employer on when and how the work will be performed	Decides when and how they will perform the work
Is assigned work to be performed by the employer	Decides what work they will do

Additionally, the classification of workers as employees or independent contractors carries tax implications. With employees, employers are generally required to withhold some pay for taxes; for independent contractors, this is not usually the case. Employers and workers can file **Form SS-8** with the IRS to request a determination of a worker's status for federal employment taxes and income tax-withholding purposes. The IRS will review the facts and circumstances and determine the worker's status.

For more information, visit the IRS resource "**Independent Contractor (Self-Employed) or Employee?"**

Real-world Case Studies

New York City, New York—A hotel management company **paid $113,613** in back wages and liquidated damages to 71 employees at 20 city hotels and an airport. Most (69) affected workers were misclassified as independent contractors and therefore denied their full earned wages, including overtime pay and bonuses.

What went wrong:

- The employer paid affected workers straight time for all hours worked, even when they worked over 40 hours a week, which means they did not receive the overtime pay they were owed.
- The employer did not provide incentive pay, such as quarterly and performance bonuses or shift pay for overnight work, when determining overtime pay.

Boston, Massachusetts—A courier service **paid $575,000** in back wages and liquidated damages to 62 drivers because they misclassified the workers as independent contractors and denied them their full pay and overtime wages.

What went wrong:

- The employer paid workers less than the federal minimum wage of $7.25 per hour by paying drivers for delivery instead of an hourly wage and requiring workers to pay for gasoline, vehicle upkeep and insurance.
- The employer failed to pay overtime to drivers who worked more than 40 hours per week.
- The employer did not keep accurate records of hours worked by affected employees as required by the FLSA.

Philadelphia, Pennsylvania—A home health care staffing agency **paid $410,000** in back wages and liquidated damages to 43 workers wrongly classified as independent contractors and $22,295 in civil penalties for repeat and willful violations.

What went wrong:

- The employer paid workers straight pay, failed to combine hours worked when workers saw multiple patients in a pay period or performed home care services on top of full-time positions, and did not include on-call hours into overtime calculations, therefore failing to pay workers overtime as required under the FLSA.



Correcting the Problems



Identify the Type of Worker

The recurring problem across all three case studies was the failure to correctly identify a worker as an employee. By doing so, these employers inadequately compensated workers under the FLSA, leading to costly financial ramifications. Employers should be diligent in classifying workers properly to ensure they comply with federal law.



Pay Overtime

One of the most common issues in these case studies was the failure to provide overtime pay to workers. FLSA-covered employers must compensate employees 1.5 times their regular pay rate for all hours worked over 40 in a workweek.



Pay Minimum Wage

In one of the case studies, misclassifying workers as independent contractors caused a Boston courier service to pay workers below the legal minimum wage. The FLSA mandates that all employees covered under the law receive a minimum wage of $7.25 per hour. Many states have additional minimum wage requirements. In cases where an employee is subject to a federal minimum wage and a state minimum wage, they are entitled to the higher wages. For more information on state wage requirements, visit the DOL resource "**State Minimum Wage Laws**."



Record Hours Diligently

Real-world examples show that employers who fail to keep accurate records of hours worked by employees risk costly violations. Under the FLSA, employers must keep accurate records for every covered, nonexempt employee. These records must include accurate employee information and data on hours worked and wages earned. To learn more about employee information employers must keep, go to the DOL resource, "**Recordkeeping and Reporting**."

Conclusion

As these case studies show, misclassifying workers can be costly. The most common mistake made by organizations in these examples was the failure to properly classify workers as employees. However, these cases should not be viewed as dispositive when determining if an organization is in compliance with the FLSA. Employers should seek legal advice if they are concerned that their organization is not in compliance with the FLSA.

It's essential for employers to learn from these mistakes and accurately distinguish between types of workers. Federal resources can help employers understand the critical differences between employees and independent contractors.

Employers should continue to monitor the FLSA and related changes that may occur. They can also explore the **DOL website** and contact us for more information regarding the FLSA.

The information in this article is not intended to be construed as legal or professional advice. Employers seeking legal advice should speak with legal counsel.
© 2024 Zywave, Inc. All rights reserved.