

NEW JERSEY LAW PROHIBITS WORKER MISCLASSIFICATION

NOTICE OF EMPLOYEE RIGHTS & EMPLOYER RESPONSIBILITIES

WHAT IS MISCLASSIFICATION?

- Misclassification is the practice of an employer improperly classifying employees as independent contractors.
- Misclassification may illegally deprive workers of basic rights, protections, and benefits guaranteed to employees such as the right to be paid the **minimum wage**, the right to **overtime pay**, **time and mode of pay** protections, the protection against **illegal deductions** from pay, **unemployment compensation**, **temporary disability benefits**, **family leave insurance benefits**, **workers' compensation**, **family leave** and **earned sick leave**.
- Often when workers are paid in cash "off the books", it may be a method to hide misclassification or other employment related legal obligations.

AM I AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR?

- Under New Jersey's Unemployment Compensation Law, Wage and Hour Law, Wage Payment Law, Wage Collection Law, Temporary Disability Benefits Law (including sections providing for Family Leave Insurance) and Earned Sick Leave Law, if you perform a service and are paid, **you are presumed to be an employee**, unless the employer can prove all three of the following:
 - (A) You have been and will continue to be free from control or direction over performance of the service, both under a contract of service and in fact; and
 - (B) The service is either outside the usual course of the business for which such service is performed, or the service is performed outside of all the places of business of the enterprise for which such service is performed; and
 - (C) You are customarily engaged in an independently established trade, occupation, profession or business.
- This is referred to in New Jersey as the "**ABC test**" for independent contractor status.
- Please go to www.myworkrights.nj.gov to learn about the factors considered for each of the three above tests.

DO I HAVE TO PROVE THAT I AM AN EMPLOYEE?

- No. If you worked and were paid, you are presumed to be an employee. It is **the employer's burden** to show that all three parts of the ABC test are met.
- If the employer can't meet its burden to establish all **three** parts of the ABC test, then you are deemed to be an employee, entitled to the rights, protections, and benefits of an employee under the above-cited New Jersey laws.
- If you believe you are misclassified, email misclass@nj.dol.gov.

DOES IT MATTER IF I RECEIVED AN IRS FORM 1099, AS OPPOSED TO IRS FORM W-2?

- No. It does not matter which federal tax form the employer uses to report earnings.
- What matters are the facts surrounding your working relationship with the employer and the application of the ABC test to those facts.

REPORTING MISCLASSIFICATION

If you have been misclassified and would like to file a claim, you can do so here: <https://wagehour.dol.state.nj.us/default.htm>

To seek further information:

EMAIL: misclass@dol.nj.gov

CALL: 609-292-2321

FAX: 609-292-7801

WRITE: Employer Accounts
Subject – Misclassification
NJ Department of Labor and Workforce Development
1 John Fitch Plaza P.O. Box 942
Trenton, NJ 08625-0942

- Whichever way you chose to reach out, multilingual staff will be able to assist you and translation assistance made available as needed
- You can also visit www.myworkrights.nj.gov to learn more about misclassification.

DISPLAY THIS POSTER IN A CONSPICUOUS PLACE



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IF MY EMPLOYER HAD ME SIGN AN INDEPENDENT CONTRACTOR AGREEMENT BEFORE HIRING ME, DOES THAT MAKE ME AN INDEPENDENT CONTRACTOR?

- No. Your employment status is determined based on an analysis of all the facts surrounding your relationship with the employer under the ABC test.
- NJ DOL would review the agreement you signed but your employment relationship would not be determined by this agreement alone.
- New Jersey courts have ruled that to consider only the agreement, if one exists, and not the totality of the facts surrounding your relationship with the presumed employer, would be to "place form over substance," which the courts say is wrong.

WHAT HAPPENS WHEN IT IS FOUND BY A STATE AGENCY OR COURT THAT AN EMPLOYER HAS MISCLASSIFIED AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR?

In addition to the award of a remedy or remedies to make the misclassified employee or the State agency whole for the employer's violation of the underlying New Jersey wage, benefit or tax law (for example, the award of back pay to the misclassified employee who has been illegally deprived of the statutory minimum wage or overtime premium pay in violation of the State Wage and Hour law, or whose pay was subject to illegal deductions in violation of the State Wage Payment law), New Jersey law also empowers the Department of Labor and Workforce Development to take **actions** and impose **penalties** against an employer who has misclassified employees including:

- A **penalty paid by the employer to the misclassified employee** of not more than 5 percent of the worker's gross earnings over the past 12 months.
- A **penalty of up to \$250 per misclassified employee for a first violation and up to \$1,000 per misclassified employee for each subsequent violation.**
- For violation of State wage, benefit or tax laws in connection with the misclassification of employees, the imposition of
 - › A **stop-work order.**
 - › The **suspension or revocation of any one or more licenses that are held by the employer** and that are necessary to operate the employer's business.
 - › Additional **penalties and fees payable to the Department** and where wages are owed to the employee, an additional amount in **liquidated damages payable to the employee equal to not more than 200 percent of the wages owed.**

AM I PROTECTED FROM RETALIATION BY MY EMPLOYER FOR REPORTING MISCLASSIFICATION?

- Employees are protected from retaliation by their employers for having made an inquiry or complaint to the employer, to the Commissioner of Labor or to an authorized representative regarding any possible violation by the employer of any State wage, benefit or tax law, including those inquiries or complaints that involve misclassification, or because the employee caused to be instituted or is about to cause to be instituted any proceeding under or related to State wage, benefit or tax law, or because the employee has testified or is about to testify in such a proceeding.
- Where such retaliation has occurred, the Department is authorized by law to issue an administrative penalty against the employer; however, only the courts are authorized by law to order reinstatement and/or back pay.

Departamento del Trabajo y Desarrollo de la Fuerza Laboral del Estado de New Jersey

LA LEY DEL ESTADO DE NEW JERSEY PROHIBE LA CLASIFICACIÓN ERRÓNEA DEL EMPLEADO

AVISO DE LOS DERECHOS DEL EMPLEADO Y LAS RESPONSABILIDADES DEL EMPLEADOR

¿QUÉ ES CLASIFICACIÓN ERRÓNEA?

- Clasificación errónea es la práctica de un empleador al clasificar indebidamente a los empleados como contratistas independientes.
- Clasificación errónea puede privar ilegalmente a los trabajadores de sus derechos básicos, protecciones y beneficios garantizados a los empleados; tales como el derecho a que se le pague el **salario mínimo**, el derecho a recibir paga por las **horas extraordinarias, tiempo y el modo de protecciones de paga**, la protección en contra de las **deducciones ilegales de la paga, compensación por desempleo, beneficios por discapacidad provisional, beneficios de seguro por licencia de familia, compensación laboral, licencia de familia y licencia por enfermedad devengada**.
- Con frecuencia, cuando a los empleados le “pagan bajo la mesa” puede ser un método para esconder la clasificación errónea o algunos otros deberes legales relacionados con el empleo.

¿SOY EMPLEADO O CONTRATISTA INDEPENDIENTE?

- Conforme a la *New Jersey's Unemployment Compensation Law* [Ley de Compensación por Desempleo en el Estado de New Jersey], *Wage and Hour Law* [Ley de Salario y Horas], *Wage Payment Law* [Ley de Paga de Salario], *Wage Collection Law* [Ley de Recaudación del Salario], *Temporary Disability Benefits Law* [Ley de Beneficios de Discapacidad Provisional] (incluso las secciones que disponen del seguro de *Family Leave Insurance* [Licencia por Familia] y la *Earned Sick Leave Law* [Ley de Licencia por Enfermedad Devengada], si usted ejerce un servicio y se le paga, **se supone que usted es empleado**; salvo que el empleador pueda probar los siguientes tres puntos:
 - (A) Usted ha estado y continuará a estar libre del control o recibir instrucciones sobre el desempeño del servicio, bajo un contrato de servicio y del hecho;
 - (B) El servicio lo rinde bien sea fuera del curso de norma del negocio por el cual desempeña dicho servicio, o el servicio lo desempeña fuera de todos los lugares del negocio de la empresa para la cual desempeña dicho servicio; y
 - (C) Usted comúnmente está comprometido con un comercio, oficio, profesión o negocio establecido independientemente.
- Esto es lo que se conoce en el Estado de New Jersey como “**ABC Test**” [“Prueba ABC”] para el estado laboral como contratista independiente.
- Sírvase visitar www.myworkrights.nj.gov para aprender acerca de los factores que se consideran para cada una de las tres pruebas en lo ante dicho.

¿TENGO YO QUE PROBAR QUE SOY UN EMPLEADO?

- No. Si usted trabajó y se le pagó por ello, se supone que usted es un empleado. El **empleador es el que conlleva la responsabilidad** de mostrar que las tres partes de la Prueba ABC han sido cumplidas.
- Si el empleador no puede cumplir con su responsabilidad de establecer que todas las tres partes de la Prueba ABC han sido establecidas, entonces a usted se le considera ser un empleado, con derecho a las protecciones de los derechos y a los beneficios de un empleado amparado por las leyes del Estado de New Jersey antes citadas.
- Si usted piensa que ha sido clasificado erróneamente, envíe mensaje electrónico a misclass@nj.dol.gov

¿IMPORTA SI YO RECIBÍ UN FORMULARIO 1099 DE PARTE DEL IRS [SERVICIO DE RENTAS INTERNAS] EN VEZ DEL FORMULARIO W-2?

- No. No importa cuál formulario de impuesto federal el empleador utiliza para informar los ingresos.
- Lo que importa son los hechos circundantes a su relación laboral con el empleador y la aplicación de la Prueba ABC a esos hechos.

INFORMAR DE CLASIFICACIÓN ERRÓNEA

Si usted ha sido clasificado erróneamente y desea presentar reclamación, lo puede hacer por medio de: <https://wagehour.dol.state.nj.us/default.htm>

Para buscar más información:

POR CORREO ELECTRÓNICO:
misclass@dol.nj.gov

LLAMAR: 609-292-2321

ENVIAR FAX: 609-292-7801

ESCRIBIR: Employer Accounts
Subject – Misclassification
NJ Department of Labor and Workforce
Development 1 John Fitch Plaza P.O. Box 942
Trenton, NJ 08625-0942

- De cualquier medio que usted prefiera para comunicarse con nosotros, tenemos personal multilingüe disponible para ayudarle y el servicio de traducción está disponible, conforme se necesite.
- También puede visitarnos en www.myworkrights.nj.gov para aprender más acerca de la clasificación errónea.

PUBLICAR ESTE CARTEL EN UN LUGAR VISIBLE



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