

Worker Misclassification

Program Evaluation
Released March 14, 2024

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Key Findings

- Overall rate of misclassification unknown
- Higher estimated misclassification rates
- Inadequate and uncoordinated approach
 - Limited duties and fragmented authority
 - Lack of agency coordination
 - Lengthy investigations
 - Lack of employer penalties
 - Lack of worker restitution

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Worker Classification Overview

- Classification reflects the work situation between a worker and employer
- Determined based on work circumstances
 - Classification “tests” (p. 24-25)

Common Worker Classifications

Employee

Independent Contractor

Worker Misclassification Defined

OLA

Worker Misclassification

Occurs when an employer classifies a worker as an independent contractor when the worker is an employee

Effects of Worker Misclassification

Worker classification determines legal rights and obligations (p. 4)

Misclassification affects:

Workers

Employers

Government

Key Agencies

Department of Labor and Industry (DLI)

- Fair labor standards
- Workers' compensation insurance

Department of Employment and Economic Development (DEED)

- Unemployment insurance

Department of Revenue (DOR)

- Income tax withholding

Misclassification in Minnesota

The overall rate of worker misclassification in Minnesota is unknown

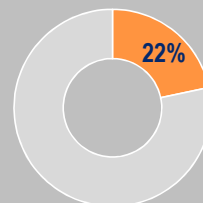
- Limited information about independent contractors
- Lacking data on cash-based economy

Misclassification Rates in Minnesota

OLA estimated misclassification based on unemployment insurance audits

- 22 percent of employers subject to an audit misclassified at least one worker in 2018
- Employers misclassified a relatively small share of their total employees in 2018

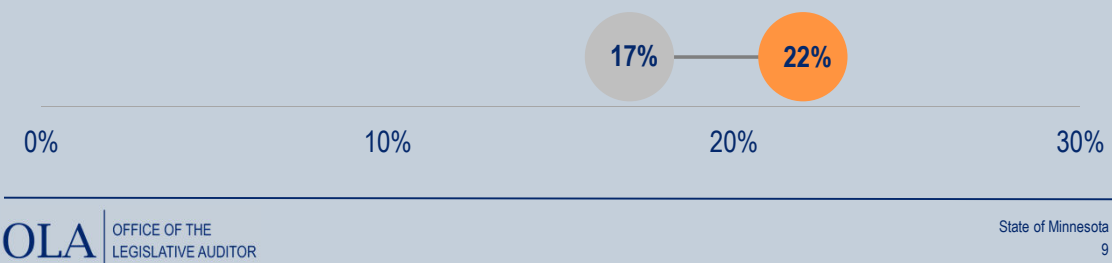
Approximately **one in five** audited employers misclassified at least one worker in 2018



Changes to Misclassification Rates

Misclassification rates were higher across several metrics, since OLA last evaluated misclassification

Share of employers that misclassified workers in OLA's
2024 review and **2007** review of worker misclassification



RECOMMENDATION

The Legislature should direct a state agency (or agencies) to calculate worker misclassification rates in Minnesota on an ongoing basis

Overview: State Approach

Minnesota has neither an adequate nor coordinated approach for ensuring that Minnesota workers are properly classified

- Limited duties and fragmented authority
- Lack of agency coordination
- Lengthy investigations
- Limited impact on parties involved

Limited Duties and Fragmented Authority

- Few duties to address misclassification in law (p. 27)
- Addressing misclassification usually byproduct of other agency activities

RECOMMENDATION

If the Legislature would like agencies to take a more active role in addressing worker misclassification, the Legislature should direct agencies to do so in law

Lack of Agency Coordination

Authority in law to address issues involving worker misclassification is fragmented across state agencies

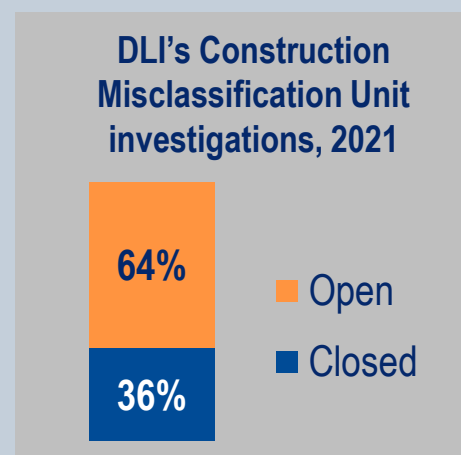
State agencies generally do not coordinate investigative efforts or share information about employers that misclassify workers

RECOMMENDATION

The Legislature should require state agencies to take a coordinated and collaborative approach to addressing worker misclassification

Lengthy Investigations

Agency efforts to identify and address instances of worker misclassification sometimes take years



RECOMMENDATION

The Legislature should consider establishing timeliness standards for worker misclassification investigations

Limited Penalties

Employers

- Limited consequences for misclassifying workers (p. 34)

Workers

- Compensated for a fraction, if any, of benefits they were denied
- Only certain workers can pursue civil action

RECOMMENDATIONS

- The Legislature should amend statutes to ensure that agencies are required to penalize employers that repeatedly misclassify workers
- The Legislature should amend statutes to allow civil action by misclassified workers in all industries

Other Issues Addressed

Construction Industry

The Legislature should repeal or significantly overhaul the registration requirement under *Minnesota Statutes* 2023, 326B.701, for individuals performing certain construction work

Gig Economy

The Legislature should consider whether Minnesota's current approach to classifying gig workers aligns with the state's policy goals and priorities and revise Minnesota statutes, if needed

Worker Misclassification

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