
Worker Misclassification

Project Description

August 2023

BACKGROUND

Depending on the nature of the work performed, a worker may be classified as an employee, independent contractor, or another type of worker. A worker's classification affects the rights and obligations of the worker and the entity that provides payment for the work. For instance, a worker's classification affects their involvement in the unemployment insurance and workers' compensation programs. It also affects the extent to which employers are subject to income tax withholding requirements and other wage and labor standards.

Worker misclassification occurs when an employer incorrectly classifies an employee as an independent contractor, consultant, or other type of (nonemployee) worker. Misclassification prevents employees from receiving the wage and labor protections afforded through their proper classification status. Additionally, misclassification can affect the government through lost tax revenue.

At least three state agencies—the departments of Employment and Economic Development (DEED), Labor and Industry (DLI), and Revenue (DOR)—have responsibilities related to worker classification. DEED, for example, addresses worker misclassification violations through audits of the state unemployment insurance program. Minnesota's Attorney General's Office also has the authority to investigate issues involving worker misclassification.

In addition to ongoing concerns about whether employers are correctly classifying workers generally, in recent years, there has been increased interest in the classification of workers who are part of the "gig" economy. As application-based gig work platforms, such as Uber or GrubHub, have increased in popularity, discussion surrounding the proper classification of these workers, who are generally classified as independent contractors, persists.

EVALUATION ISSUES

1. How frequently do employers misclassify Minnesota employees as independent contractors?
2. To what extent has Minnesota adopted an effective approach to deterring and correcting worker misclassification?
3. To what extent do current guidelines for classification address "gig" work?

DISCUSSION

This evaluation will focus specifically on the misclassification of employees as independent contractors. In doing so, we will review state and federal laws and court determinations to understand worker classification requirements, including those for gig workers. We will also evaluate the relevant policies and practices of DEED, DLI, and DOR that help ensure correct worker classification.

To better understand Minnesota's approach to addressing misclassification, we will review the efforts of other states to address misclassification, and we will review Minnesota's approach to enforcing certain other employment-related laws. We will also interview select stakeholder organizations. Finally, we will estimate how frequently employers in the state's unemployment insurance program misclassify employees.

Overall, this evaluation will focus on questions pertaining to Minnesota's laws and practices regarding the classification of workers. We will not evaluate whether employers correctly classified individual workers on a case-by-case basis.

We plan to complete the evaluation and issue a report in early 2024. For additional information, contact project manager Caitlin Badger at 651-297-1917 or Caitlin.Badger@state.mn.us.