

## What is Worker Misclassification?

Worker misclassification occurs when employers improperly classify workers as “independent contractors” instead of “employees.”

Worker misclassification is illegal, and the practice often leads to employers avoiding required workers’ compensation insurance, unemployment coverage, or other employer paid taxes and withholdings.

There are serious consequences for employers that misclassify workers, including:

- tax penalties and interest;
- labor law and safety violations;
- back unemployment insurance premiums; and
- costly lawsuits if a worker is injured on the job.

State and federal law, not contractual agreements, determine which workers can be classified as independent contractors.

## For More Information

Visit the Maine Worker Misclassification website: [www.maine.gov/labor/misclass](http://www.maine.gov/labor/misclass) for more information, or contact one of the agencies listed below.

### **Maine Department of Labor**

54 SHS, Augusta, ME 04333  
Tel: (207) 623-7900  
Fax: (207) 623-7938  
TTY: 1-800-794-1110  
[www.maine.gov/labor](http://www.maine.gov/labor)

### **Maine Workers’ Compensation Board**

27 SHS, Augusta, ME 04333  
Tel: (207) 287-7071  
Fax: (207) 287-5895  
TTY: (207) 287-6119  
[www.maine.gov/wcb](http://www.maine.gov/wcb)

### **Internal Revenue Service**

40 Lakemont Road, Newport, VT 05855  
Tel: (802) 334-0252  
Fax: (802) 334-5607  
[www.irs.gov](http://www.irs.gov)

### **Maine Revenue Services**

Income/Estate Tax Division  
24 SHS, Augusta, ME 04333  
Tel: (207) 626-8475  
Fax: (207) 624-9694  
TTY: 1-888-577-6690  
[www.maine.gov/revenue](http://www.maine.gov/revenue)



## Independent Contractor or *Employee*?

### What You Need to Know About Independent Contractors and Worker Misclassification

A publication of the Joint Enforcement Task  
Force on Employee Misclassification

[www.maine.gov/labor/misclass](http://www.maine.gov/labor/misclass)

# Employee or Independent Contractor?

How do you know the difference? State law presumes a worker is an employee unless **the business or person who does the hiring** can demonstrate otherwise.

Although each employment situation may be unique, state law looks at the amount of direction or control the worker has in their work.

Workers performing services for a business or an individual who controls the work to be done and how it will be done are typically considered to be employees under Maine law.

The employment status of that worker as an employee or an independent contractor affects

who is responsible for paying employment taxes and withholdings, liability for workers compensation and unemployment insurance coverage, and applicability of labor laws.

Maine law establishes the standards used by the Maine Department of Labor and the Maine

Workers' Compensation Board to determine which workers are independent contractors. Maine Revenue Services follows the same standards as the Internal Revenue Service.

Find out more by contacting agencies listed on the back of this brochure.

## General Characteristics of Employees and Independent Contractors

### Independent Contractor

- Free from direction and control
- Has necessary skills and training to complete job
- Has a business location
- Performs services for multiple customers
- Sets own hours
- Determines own price for contracted services
- Not eligible for employee benefits
- Provides equipment and tools used to complete job
- Supplies materials needed to do job
- Personally liable for errors and/or accidents
- Files self-employment taxes
- Has right to hire and fire workers
- Must legally complete each contract

### Employee

- Means and manner of work are (or can be) controlled by employer
- May be trained by employer to perform job
- May work at employer's business location
- Works for one employer, may serve that employer's customers
- Hours set by employer
- Accepts wage, salary, or commission determined by the employer
- Employer may provide and control equipment and tools
- Employer may purchase materials and supplies
- Employer liable for employee errors and/or accidents
- Is hired and can be fired by employer
- May quit working for an employer at any time

