



Prevent Misclassification of Employees as Independent Contractors

Background:

Employee misclassification occurs when an employer improperly classifies a worker as an “independent contractor” to undercut their labor costs to unfairly drive down labor costs on their construction contracts. These employers evade basic labor protection such as paying prevailing wages and benefits, taxes, unemployment insurance, and workers’ compensation. In addition to robbing workers of their rights, the employer is also committing tax fraud through payroll and tax evasion.

In a highly competitive construction industry, employers misclassifying employees as independent contractors undercuts responsible contractors from successfully bidding on projects and gives them an unfair advantage when exploiting these workers.

Key Points:

- Misclassifying costs the government and the American taxpayer substantial tax revenues. A 2010 study by the Congressional Research Service estimated that a proposed narrowing of the Internal Revenue Service (IRS) “safe harbor” rules, allowing employers significant leeway to treat workers as independent contractors for employment tax purposes, yields \$8.71 billion for fiscal years 2012 to 2021. A 2000 study commissioned by the U.S. Department of Labor (USDOL)—the “*Planmatics*” study—found that between 10 and 30 percent of audited employers misclassified workers.
- Compliant employers are forced to compete in the marketplace against unlawful employers who cut their labor and administrative costs. Avoiding Social Security and Medicare taxes, federal and state unemployment insurance taxes, and workers’ compensation premiums let employers who misclassify their workers reap marketplace benefits. Furthermore, the misclassification results in lost revenue for the Treasury and in the Social Security, Medicare, and Unemployment Insurance Trust Funds resulting in taxpayers to make up the difference and creating undue stress on these social safety net programs.
- Misclassifying workers as Independent Contractors excludes them from coverage under laws designed to protect them. Unfortunately, it may benefit unscrupulous employers to deliberately misclassify a worker as an independent contractor to avoid the burden associated with these protective laws. Such protections include the Fair Labor Standards Act (FLSA), which provides minimum wage, overtime pay, and child labor protections. Additional laws designed to protect employees include the Family Medical Leave Act, Occupational Safety and Health Act, and the National Labor Relations Act. Misclassified workers may also lose access to employer-provided health insurance coverage and retirement benefits.

NECA Asks:

Support legislation that would clarify the employment status of service providers in the construction industry and ensure that full-time employees avoid misclassification. All federal infrastructure funds need to have responsible contractor language to ensure contractors don’t misclassify their employees as independent contractors.