NECA Government Affairs

Prevent Misclassification of Employees as Independent Contractors

Employee misclassification occurs when an employer improperly classifies a worker as an "independent contractor" to unfairly drive down labor costs on 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.

The regulatory landscape for worker classification has shifted significantly in recent years. In May 2025, the Department of Labor reverted to its 2008 enforcement guidance on worker classification under the Fair Labor Standards Act, moving away from the more worker-friendly 2024 rule. Despite this shift toward more flexible federal standards, misclassification remains a serious enforcement priority, with states like California maintaining strict ABC tests for classification. Construction remains one of the industries most vulnerable to misclassification abuse.

KEY POINTS

Misclassifying costs billions in lost tax revenue. According to a 2025 analysis by the Economic Policy Institute (EPI) and supporting data from federal audits, misclassification in the construction industry alone results in an estimated loss of over $10 billion in federal and state tax revenue annually. This includes $5.13 billion in unpaid federal employment taxes, stripping vital funds from the Social Security and Medicare Trust Funds. Federal audits consistently find that between 10 and 30 percent of employers misclassify at least one worker, shifting the financial burden onto law-abiding taxpayers and responsible businesses.

The high cost to workers. The Economic Policy Institute's January 2025 study found that a typical construction worker misclassified as an independent contractor loses as much as $19,526 per year in income and job benefits. Because the employer avoids paying their half of social insurance taxes, the worker is forced to assume the full financial cost of Social Security and Medicare contributions while losing access to overtime pay, healthcare, and retirement security.

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 (FMLA), Occupational Safety and Health Act (OSHA), and the National Labor Relations Act (NLRA). Misclassified workers also lose access to employer-provided health insurance coverage, retirement benefits, unemployment insurance, and workers' compensation.

Unfair marketplace competition. Compliant employers are forced to compete against unlawful actors who slash administrative costs by avoiding mandatory taxes and insurance premiums. This "race to the bottom" creates undue stress on the national safety net and puts honest contractors at a severe disadvantage when bidding on major infrastructure projects.

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.