

# Is Your Employer Misclassifying You? Why Independent Contractor vs. Employee Status Matters

Worker misclassification is a critical issue that affects thousands of employees, potentially costing them significant amounts in lost wages, benefits, and legal protections. This comprehensive guide, prepared by Swartz Swidler, Attorneys for Workers' Rights, explains the differences between independent contractors and employees, signs of misclassification, and steps to protect your rights in New Jersey. Understanding your worker classification is crucial for ensuring fair treatment and compensation in the workplace.

 by John Palmer

# Understanding Worker Misclassification

Worker misclassification occurs when an employer wrongly categorizes an employee as an independent contractor. This practice, whether intentional or accidental, allows employers to avoid legal obligations at the expense of their workforce.

## Employees

- Follow employer's directions
- Receive benefits (health insurance, PTO, retirement)
- Employer handles payroll taxes

## Independent Contractors

- Determine own schedules and methods
- Do not receive benefits
- Responsible for own taxes, including self-employment tax

# Why Classification Matters

## Legal Protections

Employees are covered by laws like the Fair Labor Standards Act (FLSA), guaranteeing minimum wage, overtime pay, and protection from workplace discrimination. Independent contractors are not.

## Tax Implications

Misclassified workers bear the burden of self-employment taxes, often leading to unexpected financial stress.

## Benefits

Employees may receive health insurance, retirement plans, paid time off, family leave, workers' compensation, and unemployment insurance.

## Job Security

Employees benefit from protections against wrongful termination, while contractors do not.



# Common Signs of Misclassification



## Employer Control Over Work

You are assigned a schedule and required to follow specific procedures.



## Employer-Provided Tools

Your employer supplies tools, equipment, or software necessary for your job.



## Exclusivity

You are restricted from working for other companies.



## Long-Term Engagements

You have an ongoing, full-time relationship with the company, similar to an employee.



## Denial of Benefits

Despite functioning like an employee, you are denied benefits like health insurance or paid leave.

# Your Rights Under the Law

## Federal Laws

The Department of Labor enforces the FLSA, ensuring that employees are paid fairly and protected under labor laws.

## New Jersey Laws

The state applies the ABC Test to determine classification.

To be classified as an independent contractor:

- A: You must control how your work is performed.
- B: Your work must be outside the normal scope of the employer's business.
- C: You must operate an independent business.

## IRS Guidelines

The IRS evaluates classification based on:

- Behavioral control
- Financial control
- The nature of the working relationship

# Steps to Take If You Suspect Misclassification

1

## Review Your Work Agreement

Examine your contract for terms that conflict with your independent contractor status.

2

## Document Your Work Relationship

Keep records of your work hours, tasks, and the tools or equipment provided by your employer.

3

## Consult with an Employment Attorney

Seek legal advice to determine whether your classification violates labor laws.

4

## File a Complaint

Report misclassification to the Department of Labor or the New Jersey Division of Wage and Hour Compliance.

# Frequently Asked Questions (FAQ)

- What is worker misclassification? Worker misclassification happens when an employer categorizes an employee as an independent contractor to avoid providing benefits or protections.
- How can I tell if I've been misclassified? Signs include:
  - Employer controls your schedule and tasks.
  - You use employer-provided tools or equipment.
  - You are denied benefits despite a long-term work relationship.
- What can I do if I suspect misclassification?
  - Document your work relationship.
  - Consult an attorney to evaluate your case.
  - File a complaint with the Department of Labor or the NJ Division of Wage and Hour Compliance.
- Can I take action even if I signed a contract? Yes. Courts and enforcement agencies prioritize the actual working relationship over the contract language.
- What compensation can I recover? You may recover:
  - Back pay for overtime or unpaid wages.
  - Reimbursement for self-employment taxes.
  - Damages for denied benefits or wrongful termination.



# How Swartz Swidler Can Help

## Free Consultations

We offer free case evaluations to help you determine your classification and rights.

## Proven Expertise

Our attorneys have successfully represented workers in misclassification cases, securing compensation for unpaid wages and benefits.

## Comprehensive Support

We'll guide you through every step, from gathering evidence to filing claims and negotiating settlements.

Contact Us Today: Call (856) 685-7420 or visit [swartz-legal.com](http://swartz-legal.com) to schedule your free consultation.

Empower yourself with the knowledge to protect your rights. Download this guide now and take the first step toward justice.