

Employee Misclassification Prevention Act (EMPA) – Fact Sheet

Introduction

For too long, misclassified workers have been denied basic worker safeguards, including:

- Minimum wage
- Overtime
- Unemployment insurance
- Health and safety laws
- Discrimination protections
- Workers' compensation.

Tens of thousands of employers misclassify their employees – many cut corners to save costs by converting employees into independent contractors. If employees are classified as independent contractors, then an employer doesn't have to pay them overtime or their share of Social Security or Medicare. Employers don't have to worry about paying unemployment insurance taxes or offering health insurance.

Details of the Legislation

1. Classification of Employees

a. Recordkeeping and Notice:

- Requires employers to keep wage and hour records of workers who are not employees and 1) are engaged in the course of the employer's trade or business and 2) for whom the employer is required file an IRS 1099. The record keeping requirement also extends to certain non-employees providing services through business entities that they own.
- Creates a rebuttable presumption that, when an employer fails to keep wage and hour records or provide a worker with notice of classification, the worker will be considered an employee.
- Requires that records kept pursuant to the Act include an accurate classification of the worker as either an employee or a non-employee.
- Requires that all employees and non-employees be given written notice of their classification and that they be directed to DOL employee rights resources.

b. Prohibitions and Penalties

- Makes it a violation of the Fair Labor Standards Act to discharge or discriminate against a worker because he or she has opposed any practice concerning his or her classification.
- Makes it a violation of the Fair Labor Standards Act to misclassify an employee.
- Extends a private right of action to misclassified employees to recover lost wages and, when an employer also violates minimum wage or maximum hour standards, double liquidated damages.
- Subjects employers to a civil penalty up to \$1,100 for misclassification violations or violations of minimum wage or overtime standards and up to \$5,000 when such violations are repeated or willful.

c. Employee Rights Website - Directs DOL to establish a website summarizing the rights of workers under this Act.

2. State Directives – Makes unemployment compensation grants contingent on a state:

- a. having auditing and investigative procedures in place to identify employers that exclude employees from unemployment compensation;
- b. filing quarterly reports describing the findings of such procedures; and
- c. establishing administrative penalties for misclassifying employees or paying unreported compensation. DOL is also required to audit states' performance in conducting unemployment compensation tax audits.

3. Departmental Coordination – Directs all divisions of DOL to report information obtained concerning misclassification to DOL's Wage and Hour Division, which may report such information to the IRS, as appropriate.

4. Directed Audits – Directs the DOL's Wage and Hour Division to conduct audits of industries with frequent incidence of misclassification.