



## KNOW YOUR RIGHTS:

# Independent Contractors and Employees

Facts from the NC Justice Center's WORKERS' RIGHTS PROJECT

## ► YOUR RIGHT to wages and benefits as an employee.

Employers sometimes incorrectly call their employees **independent contractors** instead of employees. This is called misclassification. Employers may misclassify workers as independent contractors because then they do not have to pay payroll taxes, contribute to Social Security, or pay workers' compensation and unemployment insurance.

### What is an independent contractor?

An independent contractor is a worker who provides goods or services to another individual or business through an agreement. The terms of the agreement (which does not have to be written) control the relationship, and the independent contractor treats the other party like a customer or client, rather than an employer. Independent contractors are self-employed, can have multiple clients, and typically find those clients on their own.

### How do I know if I am an independent contractor or employee?

There is no clear rule identifying who is an employee and who is an independent contractor because it is based on the specific situation. Some things to look at are who controls the relationship, who controls the work, and whether the worker is economically dependent on the other person or business. If your employer gives you a 1099 tax form, instead of a W-2, they are treating you as an independent contractor. They may also be treating you as an independent contractor if they pay you in cash and don't take out any taxes.

### Why does misclassification matter?

Benefits and procedures are different for independent contractors and employees.

Independent contractors have fewer protections. Independent contractors are not protected by wage and hour

### Did you know?

You may be an **employee**, not an independent contractor if:

- Your employer has the power to exercise control over the way you complete your job (how, when, and where you do your work).
- Your hours are set by your employer.
- You are paid on set dates in regular amounts.
- You are given extensive supervision.
- You are trained by your employer to do your job in a certain way.
- Your employer provides the tools and materials required to perform your job.
- You have worked for the same employer year after year.
- You work for only one employer.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in North Carolina. However, this fact sheet does not address exemptions and does not go into detail regarding legal rights. In addition, laws and legal procedures are subject to frequent change and differing interpretations, and the North Carolina Justice Center cannot ensure the information in this sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

## ► **YOUR RIGHT** to wages and benefits as an employee.

laws (e.g., minimum wage and overtime pay). They do not have access to workers' compensation if injured on the job, and they usually cannot apply for unemployment insurance if out of work. In addition, independent contractors cannot get time off to take care of a serious health condition, and they are not protected from discrimination based on disability, age, national origin, race, or sex. Independent contractors aren't guaranteed the right to collectively bargain.

Independent contractors pay more out of pocket taxes because they have to pay the full amount of payroll taxes, instead of splitting it with the employer

### **What should you do if you think you were misclassified?**

If you think you have been misclassified, make sure you keep detailed records of the hours and type of work you performed (including tasks and how you were supervised).

You may be entitled to wage recovery, unemployment insurance, or other legal remedies. Consult with an attorney.

You can also file IRS Form SS-8 to have your federal tax withholdings corrected. Your employer will know you have contacted the IRS.

### **Take Action!**

Workers should be paid for all the hours they work. We are working to strengthen North Carolina's laws on wage theft.

Your story can help us make the case for stronger worker protections. **If you have ever not been paid what you were owed** by your employer, or **if you were misclassified** as an independent contractor, please contact us to tell your story.

Contact: [Ajamu@ncjustice.org](mailto:Ajamu@ncjustice.org)

## **RESOURCES**

For help finding a lawyer, call:

- North Carolina Advocates for Justice ..... 1-(800) 688-1413
- North Carolina Bar Association Lawyer Referral Service ..... 1-(800) 662-7660
- Legal Aid of North Carolina ..... 1-(866) 219-5262

*To file a claim with a government agency or to seek information on the following issues, contact:*

<b>DISCRIMINATION</b>	<ul style="list-style-type: none"><li>▪ US Equal Employment Opportunity Commission</li><li>▪ Office of Special Counsel for Unfair Immigration-Related Employment Practices</li></ul>	<b>1-800-669-4000 - or - <a href="http://www.eeoc.gov">www.eeoc.gov</a></b> <b>1-800-255-7688 - or - <a href="http://www.justice.gov/crt/about/osc/">www.justice.gov/crt/about/osc/</a></b>
<b>E-VERIFY</b>	<ul style="list-style-type: none"><li>▪ Department of Homeland Security / E-Verify</li></ul>	<b>1-888-897-7781 - or - <a href="http://www.dhs.gov/e-verify">www.dhs.gov/e-verify</a></b>
<b>FAMILY AND MEDICAL LEAVE</b>	<ul style="list-style-type: none"><li>▪ US Department of Labor</li></ul>	<b>1-866-487-9243 - or - <a href="http://www.dol.gov/whd">www.dol.gov/whd</a></b>
<b>HEALTH &amp; SAFETY</b>	<ul style="list-style-type: none"><li>▪ NC Department of Labor</li></ul>	<b>1-800-NC-LABOR (625-2267) - or - <a href="http://www.nclabor.com/osh/osh.htm">www.nclabor.com/osh/osh.htm</a></b>
<b>MISCLASSIFICATION</b>	<ul style="list-style-type: none"><li>▪ Internal Revenue Service</li></ul>	<b><a href="http://www.irs.gov/pub/irs-pdf/fss8.pdf">http://www.irs.gov/pub/irs-pdf/fss8.pdf</a></b>
<b>RETALIATION</b>	<ul style="list-style-type: none"><li>▪ NC Department of Labor, Employment Discrimination Bureau</li></ul>	<b>1-800- 625-2267 - or - <a href="http://www.nclabor.com/edb/edb.htm">www.nclabor.com/edb/edb.htm</a></b>
<b>UNEMPLOYMENT INSURANCE</b>	<ul style="list-style-type: none"><li>▪ NC Department of Commerce, Division of Employment Security</li></ul>	<b>1-877-841-9617 - or - <a href="https://www.ncesc.com/">https://www.ncesc.com/</a></b>
<b>UNIONS &amp; COLLECTIVE ACTION</b>	<ul style="list-style-type: none"><li>▪ National Labor Relations Board</li></ul>	<b>1-866-667-6572 - or - <a href="http://www.nlr.gov">www.nlr.gov</a></b>
<b>WAGE THEFT</b>	<ul style="list-style-type: none"><li>▪ NC Department of Labor, Wage and Hour Bureau</li><li>▪ US Department of Labor</li></ul>	<b>1-800-625-2267 - or - <a href="http://www.nclabor.com/wh/wh.htm">www.nclabor.com/wh/wh.htm</a></b> <b>1-866-487-9243 - or - <a href="http://www.dol.gov/whd/">http://www.dol.gov/whd/</a></b>
<b>WORKERS' COMPENSATION</b>	<ul style="list-style-type: none"><li>▪ NC Industrial Commission</li></ul>	<b>1-800- 688-8349 - or - <a href="http://www.ic.nc.gov/">http://www.ic.nc.gov/</a></b>