

# MISCLASSIFIED WORKERS



*Alabama*  
*Department of Labor*

# Introduction

- Definition
- Common Law Factors
- Examples of IC and Employee
- Why is Misclassification Harmful?
- Conclusions



*Alabama*  
*Department of Labor*

# DEFINITION OF EMPLOYMENT/EMPLOYEE

Code of Alabama 1975, Section 25-4-7



*Alabama*  
*Department of Labor*

# What Makes an Employee?

When is an individual considered an employee?

- Does the master/servant relationship exist?
  - right of control
- Common Law Factors
- Examples on our website
- Ask your local field tax representative



*Alabama*  
*Department of Labor*

# MISCLASSIFICATION OF EMPLOYEES

- Commonly occurs due to error
- Accountants can help guide properly
- Primary difference is the “right of control”





# 20 COMMON LAW FACTORS

1. Instructions

2. Training

3. Integration

4. Services rendered personally

5. Hiring, supervising, paying helper

6. Continuing relationship

Reference 25-4-10



*Alabama*  
*Department of Labor*

# 20 COMMON LAW FACTORS

7. Set hours of work

8. Full time required

9. Location where services are rendered

10. Order or sequence set

11. Oral or written reports

12. Payment by the hour, week or month

13. Payment of business & travel expense



Alabama

Department of Labor

[http://labor.alabama.gov/uc/COMMON\\_LAW\\_FACTORS\\_WITH\\_EXAMPLES.pdf](http://labor.alabama.gov/uc/COMMON_LAW_FACTORS_WITH_EXAMPLES.pdf)

# 20 COMMON LAW FACTORS

14. Furnishing tools & equipment

15. Significant investment

16. Realize profit or loss

17. Working for more than one firm

18. Making service available to the public

19. Right to discharge without liability

20. Right to quit without liability



*Alabama*  
*Department of Labor*



# INDEPENDENT VERSUS EMPLOYEE

1. Attorney or accountant
2. Auto mechanic
3. Dance instructor
4. Repairperson

<http://labor.alabama.gov/uc/employer.aspx#q30>



*Alabama*  
*Department of Labor*



# THE HARM IN MISCLASSIFICATION

## Workers who are misclassified may:

- Be ineligible for unemployment insurance and workers' compensation
- Lose other labor law protections
  - minimum and prevailing wage
  - overtime
  - health and safety
  - FMLA, family medical leave



*Alabama*  
*Department of Labor*

# THE HARM IN MISCLASSIFICATION

## Workers who are misclassified may:

- Become liable for funding their full Social Security and Medicare taxes and for reporting their own income taxes
- Lose access to employer-based benefits, such as health insurance



*Alabama*  
*Department of Labor*

# THE HARM IN MISCLASSIFICATION

## Employers who misclassify their workers:

- Avoid paying income taxes, FICA taxes, UC taxes and workers' compensation
- Create an unfair competitive advantage
- Underbid employers who do not misclassify their employees
- Cause employers who “play by the rules” to pay higher unemployment taxes



*Alabama*  
*Department of Labor*

# THE HARM IN MISCLASSIFICATION

## Taxpayers lose because:

- Less unemployment taxes are collected to pay unemployment benefits, as taxable wages are underreported.
- The social safety net is harmed by depriving the Unemployment Trust Fund monies due.



*Alabama*  
*Department of Labor*



# CONCLUSION

- Definition
- Common Law Factors
- Examples of IC and Employee
- Why is Misclassification Harmful
- Conclusions



*Alabama*  
*Department of Labor*

# QUESTIONS



*Alabama*  
*Department of Labor*