

OHIO

Misclassification occurs when an employer incorrectly defines a worker as an “independent contractor” rather than an employee. In Ohio, different agencies are responsible for separate aspects of the law, and those agencies use different rules and tests to determine employment status.

Workers’ Compensation

For worker classification purposes, Ohio employs the 20-factor statutory test that set out in [Ohio Revised Code § 4123.01](#). The test is modeled on the IRS 20-factor test, and provides that... “(e)very person who performs labor or provides services pursuant to a construction contract... (is an employee)... if at least ten of the following criteria apply:

1. The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services;
2. The person is required by the other contracting party to have particular training;
3. The person's services are integrated into the regular functioning of the other contracting party;
4. The person is required to perform the work personally;
5. The person is hired, supervised, or paid by the other contracting party;
6. A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;
7. The person's hours of work are established by the other contracting party;
8. The person is required to devote full time to the business of the other contracting party;
9. The person is required to perform the work on the premises of the other contracting party;
10. The person is required to follow the order of work set by the other contracting party;
11. The person is required to make oral or written reports of progress to the other contracting party;
12. The person is paid for services on a regular basis such as hourly, weekly, or monthly;
13. The person's expenses are paid for by the other contracting party;
14. The person's tools and materials are furnished by the other contracting party;
15. The person is provided with the facilities used to perform services;
16. The person does not realize a profit or suffer a loss as a result of the services provided;
17. The person is not performing services for a number of employers at the same time;
18. The person does not make the same services available to the general public;
19. The other contracting party has a right to discharge the person;
20. The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.”

Unemployment Compensation

For worker classification purposes, Ohio employs another 20-factor statutory test set out in [Ohio Revised Code §4141.01\(B\)\(2\)\(k\)](#). The test is essentially the same as the statutory test for workers’ compensation, but there are variations in terminology.

Wage and Hour

Ohio Revised Code §4111.14(B) adopts the definition of “employee” in the [U.S. Code §203\(e\)](#). For wage and hour purposes, Ohio applies the employee status determination test used by the U.S. Department of Labor, Wage and Hour Division (WHD) under the Fair Labor Standards Act.

Income Taxes

For state income tax purposes, the Ohio Department of Taxation will use federal IRS determinations of employee/independent contractor status. [IRS Form SS-8](#) (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding).

Memorandum of Understanding

The U.S. Department of Labor (DOL) has initiated a Misclassification Initiative in which it has entered into memorandums of understanding (MOU) with states from coast to coast to coordinate enforcement efforts and share information between the state and federal agencies about non-compliant companies. Ohio has not entered into an MOU with the DOL Wage and Hour Division regarding the misclassification of workers.

Additional Resources

[Fact Sheet #13: Am I an Employee? Employment Relationship Under the Fair Labor Standards Act \(FLSA\)](#)
[IRS Form SS-8](#) (Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding) with the IRS.

Income Tax: ORC § 5747.01, et seq.

Wage and Hour: ORC § 4111.01 – 4111.99

Workers' Compensation: ORC § 4123.01 to 4123.99

Unemployment Compensation: ORC § 4141.01 to 4141.99