

# GET THE FACTS ON MISCLASSIFICATION

## UNDER THE FAIR LABOR STANDARDS ACT Employee or Independent Contractor?

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime pay protections to nearly all workers in the U.S. Some employers incorrectly treat workers who are employees under this federal law as independent contractors. We call that “misclassification.” If you are misclassified as an independent contractor, your employer may try to deny you benefits and protections to which you are legally entitled.

Please refer to **Fact Sheet 13** for more information on the factors used to determine whether you’re an employee or an independent contractor.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

**1-866-4US-WAGE**  
dol.gov/whd



**EMPLOYEES**

Employers may not misclassify an employee for any reason, even if the employee agrees.



You are not an independent contractor under the FLSA merely because you work offsite or from home with some flexibility over work hours.



Receiving a 1099 does not make you an independent contractor under the FLSA.



Even if you are an independent contractor under another law (for example, tax law or state law), you may still be an employee under the FLSA.



Signing an independent contractor agreement does not make you an independent contractor under the FLSA.



Having an employee identification number (EIN) or paperwork stating that you are performing services as a Limited Liability Company (LLC) or other business entity does not make you an independent contractor under the FLSA.



Whether you are paid by cash or by check, on the books or off, you may still be an employee under the FLSA.



“Common industry practice” is not an excuse to misclassify you under the FLSA.