



Worker Misclassification

Minnesota has neither an adequate nor coordinated approach for ensuring that Minnesota workers are properly classified.

Report Summary

Misclassification Rates in Minnesota

Although several state agencies undertake efforts related to addressing worker misclassification, no state agency calculates a rate at which workers are misclassified in Minnesota. We estimated worker misclassification rates using data from DEED’s unemployment insurance audits of employers.

- The overall rate of worker misclassification in Minnesota is unknown. However, according to DEED audit data, estimated rates of worker misclassification were higher in 2018 than when OLA last issued a report on worker misclassification in 2007. (pp. 11, 17)
- Misclassification occurred in many industries. According to DEED audit data, we estimated that 22 percent of employers subject to a random unemployment insurance audit misclassified at least one worker in 2018. (pp. 14-15)

Recommendation ► The Legislature should direct a state agency (or agencies) to calculate worker misclassification rates in Minnesota on an ongoing basis. (p. 19)

State Agency Efforts to Address Misclassification

State agencies may conduct investigations or audits related to worker misclassification, but the extent of these efforts and their impacts on the entities involved are limited.

- State law assigns DLI, DEED, and DOR limited duties to ensure workers are correctly classified. Generally, the efforts of these agencies to identify and correct worker misclassification result from administering or enforcing other state laws or programs. (pp. 27-28)

Recommendation ► If the Legislature would like agencies to take a more active role in addressing worker misclassification, the Legislature should direct agencies to do so in law. (p. 29)

Background

A worker’s classification, such as being an employee or an independent contractor, is important because it affects the legal rights and obligations of the worker and their employer.

Worker misclassification—which is prohibited by state law—occurs when an employer incorrectly classifies a worker. When worker misclassification occurs, a worker may lose rights that they are afforded in law, employers who properly classify their workers may be forced to compete with misclassifying employers who have an unfair competitive advantage due to lowered labor costs, and the government may lose program and tax revenues.

Several state agencies undertake activities that involve identifying and correcting worker misclassification. We focused on the efforts of the following agencies to address worker misclassification:

- Department of Labor and Industry (DLI)
- Department of Employment and Economic Development (DEED)
- Department of Revenue (DOR)

- The authority in state law to address issues involving worker misclassification is fragmented across state agencies, and agencies generally do not coordinate investigative efforts or share information about employers that misclassify workers. (pp. 29-30)

Recommendation ► The Legislature should require state agencies to take a coordinated and collaborative approach to addressing worker misclassification. (p. 39)

- Minnesota law outlines several different tests to determine a worker’s classification, which creates challenges to addressing misclassification. (p. 22)

Recommendation ► To the extent possible, the Legislature should enact common tests for determining worker classification and reduce the number of different classification tests currently in law. (p. 26)

- State agency efforts to identify and address instances of worker misclassification sometimes take years. (p. 31)

Recommendation ► The Legislature should consider establishing timeliness standards for worker misclassification investigations. (p. 32)

- When state agencies find worker misclassification, employers face limited consequences for misclassifying workers. (p. 32)

Recommendation ► The Legislature should amend statutes to ensure that agencies are required to penalize employers that repeatedly misclassify workers. (p. 35)

- Workers may be compensated for only a fraction, if any, of the benefits they were denied as a result of being misclassified, and only certain workers can pursue civil action to directly rectify their misclassification. (p. 36)

Recommendation ► The Legislature should amend statutes to allow civil action by misclassified workers in all industries. (p. 37)

Summary of Agencies’ Responses

In a letter dated March 8, 2024, DLI Commissioner Blissenbach said that “DLI considers worker misclassification a significant problem in Minnesota” and the “OLA report highlights some of the challenges inherent in DLI’s efforts to enforce statutes specific to worker misclassification.” She further stated that “DLI is committed to tackling this issue head-on and always strives to improve its efforts in this area.” She explained that DLI is currently working on legislative changes to address misclassification, in addition to taking steps to improve the agency’s misclassification enforcement efforts.

DEED Commissioner Varilek stated in a letter dated March 6, 2024, that “addressing misclassification is critical to helping DEED achieve its mission, and we appreciated [OLA’s] recommendations for improving education, prevention, detection, and correction of worker misclassification. We look forward to working with our agency partners and stakeholders across the state to ensure that Minnesota employers and workers have access to a level playing field....”

In a letter dated March 8, 2024, DOR Commissioner Marquart commented that the agency appreciated the evaluation’s “identification of the challenges and the impacts of employee misclassification to our state...and agree with the value of coordinating this work to effectively administer worker classification laws.” The Commissioner continued, “we have taken this opportunity to continue to look for ways to improve and refine our processes.”