

Avoid the Hidden Risks of Misclassifying Employees

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When businesses need workers, the question of classification arises: Should these workers be treated as W-2 employees or independent contractors? Misclassifying employees as independent contractors can have significant financial and legal consequences, making it critical for companies to understand the risks and the benefits of getting it right.

As an employer, you have two options when looking to hire— go directly and screen appropriately or use a staffing and recruitment platform that stays up to date on the legal aspects in today’s environment.

The Consequences of Misclassifying Employees

Misclassifying employees as independent contractors may seem like an attractive way to reduce costs and administrative burdens, but it can lead to major complications. In 2024, as part of its efforts to address misclassification, the Fair Labor Standards Act’s Wage and Hour Division published a final rule introducing new guidance for [analyzing classification](#).

Companies have started using new Uber-like gig sites that treat workers as if they are 1099 to avoid paying the employer taxes, but the sites and clients eventually get fined. Gig platforms

and businesses should prioritize accurate and timely filing of Form 1099-NEC to avoid potential penalties from the IRS. It's best to consult with a tax professional for guidance on specific filing requirements and to ensure compliance.

Employers who are misclassifying employees, even unintentionally, risk:

- **Back Taxes and Penalties:** If the IRS or Department of Labor determines that a worker was misclassified, businesses can be held responsible for unpaid payroll taxes, Social Security, and Medicare contributions, plus penalties and interest. **Businesses could be shocked to find out it can be triple the damages.**
- **Legal Action:** Workers who believe they were wrongly classified can sue for unpaid wages, overtime, benefits, and protections they would have received as employees. Across the country, state Attorneys General are winning [multi-million-dollar lawsuits](#) against companies engaged in misclassification of workers. The City of San Francisco [settled with a third staffing platform](#), GigSmart, over misclassification, while, separately, “a Los Angeles-based hospitality staffing firm... [filed suit](#) in San Francisco Superior Court against three other staffing platforms and two buyers claiming misclassification of temporary workers represents unfair competition.”
- **Reputational Damage:** Public lawsuits or government action—even employees complaining on social media—can damage a company's brand and trust within the industry. Companies, even staffing companies, want to save time and money, at the risk of becoming the next Uber, known for its [classification controversies](#).
- **Hiring Non-legal Workers:** Hiring independent contractors also bypasses the I-9 form, which is used to verify the identity and employment authorization of individuals hired for employment in the United States. That said, employers are still responsible for verifying that contractors are authorized to work if they have reason to believe otherwise.

A Simple Solution: Staffing Companies and W-2 Employees

Instead of navigating the complexities of worker classification alone, businesses in the printing, packaging, and graphic communications industries can turn to a trusted staffing partner. When companies work with a staffing firm that classifies its temporary hires as W-2 employees, they gain several advantages:

- **No Compliance Headaches:** The staffing company handles payroll taxes, workers' compensation, unemployment insurance, and benefits.
- **Flexible Workforce Without Risk:** Businesses can scale up or down without the worry of worker misclassification issues.

- **Experienced Industry-Specific Talent:** A focused staffing database ensures workers have the right skills and experience to meet production needs efficiently.
- **Payrolling Services:** Semper LLC offers complete payrolling services, which takes the pressure off employees to manage that side of their business, and stick to what they know.

Look for Staffing Companies and “Gig” sites that Hire W2 Employees

While staffing companies offer a legal and streamlined approach to temporary and flexible labor, not all firms follow best practices. Some [online staffing agencies and “gig” sites](#) have been accused of misclassifying their own workers as independent contractors to cut costs and offer lower prices to their clients.

Although this model seems to create a competitive advantage over staffing and recruitment agencies like PrintWorkers that classify their workers correctly as W-2 employees, it is actually very risky for both the hiring employer and the unchecked staffing agency. Often, the hired worker is expecting to be a W2 instead of a 1099, and when that question is triggered, all parties involved run the risk of penalties, legal disputes, and reputational harm.

The employees who are hired as contractors instead of true employees of a staffing agency need to do their due diligence and be clear of liability in case of a misunderstanding or other event. And employers may want to seek proof of insurance coverage, be transparent on tax liability, confirm legal citizenship status, offer billing versus internal time tracking, credit terms for payment, and non-disclosure agreements, to name a few. Another step would be to ask for a certificate of good standing with the state in which the person performs the work in.

Take the guesswork and risk out by seeking a temporary labor partner that properly classifies workers as W-2 employees, handles all tax and compliance responsibilities, verifies legal status, and operates with transparency and adherence to labor laws. Non-compliance or a challenge to the contractor/employee status could result in triple damages for the employer.

Job seekers considering staffing agencies or new employment should choose employers that classify workers as W-2 employees rather than independent contractors. A reputable agency and workplace will provide payroll tax contributions, workers’ compensation, unemployment insurance, and access to benefits. These protections ensure job stability, compliance with labor laws, and peace of mind.

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