

# Misclassification Task Force

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# Business Perspective on the Misclassification Issue

## Points to keep in mind

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Current laws governing when it is acceptable to treat an individual performing work for a business as an independent contractor are confusing and inconsistent among agencies. Furthermore, the same laws are sometimes applied differently among agencies.

There are workers who do choose to operate as independent contractors. It is not always the business that makes the decision.

Administrative warnings in writing do not excuse employers from usual penalties and late fees.

# State Comparison of Misclassification Laws

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Only 26 states have misclassification laws.

All of them have penalty provisions.

3 of them are specific to construction trades only and another only to government contracts.

# State Comparison of Misclassification Laws

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Neighboring states with no misclassification statutes:

Alabama  
Arkansas  
Georgia

Kentucky  
Mississippi  
Oklahoma

South Carolina  
Tennessee

# State Comparison of Misclassification Laws

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Neighboring states with misclassification statutes:

Florida – \$2,500 - \$5,000 first offense penalty per site

North Carolina – Information sharing required among state agencies that have individual penalty structures

Texas - \$200 first offense penalty per misclassified worker; however, only applies to contractors with government

# Tests of “Employee” vs “Independent Contractor” Status

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12 states use IRS 20-Factor test

10 states use Common Law “Right to Control” test

13 states use ABC test and 11 use a modified version

4 states have created a hybrid of their own

# Tests of “Employee” vs “Independent Contractor” Status

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Among neighboring states:

Arkansas, Oklahoma, Tennessee and Texas use the IRS test

Alabama, Kentucky, Mississippi, North Carolina, and South Carolina use the Common Law test.

Florida and Georgia use a modified ABC test.



## Louisiana's business community strongly believes:

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1. Definitions must be clear and consistent across all agencies.
2. Compliance must be as simple as possible.

## Louisiana's business community strongly believes:

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3. Emphasis must remain on helping and encouraging employers to comply.
4. A safe harbor procedure should be established for self-reporting employers.

## Louisiana's business community strongly believes:

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5. Industries historically using independent contractors legally must be allowed to continue to do so.
6. The growing “gig economy” must be accommodated.
7. Penalties for repeat offenders must be reasonable but effective. Penalties must also contemplate usual penalties and late fees already imposed.