Reclaim Your Worker Rights

Stop paying extra taxes and find out how to get the benefits you deserve!

Your employer should treat you fairly. This means more than just getting paid. You also have a legal right to things like unemployment insurance and Social Security credits. If your employer treats you like a contractor (or gives you a 1099 form), you might be missing out on important benefits and paying higher taxes than you’re supposed to. Use this guide to find out how to fight it!
What is misclassification?

It's when your employer calls you an independent contractor even though you're actually an employee.

30% of businesses misclassify at least one worker and millions of workers are misclassified every year. Misclassification can happen in any job. It happens a lot in:

- Home care
- Trucking
- Construction
- Janitorial work
- Clerical work
- Staffing or temp agencies
- Nonprofits

What does it look like?

If you have a job, your employer should give you a form to file with your taxes. The form they give you can affect whether you get a refund or owe taxes. At the beginning of every year, they should give you either a 1099 or W-2.

1099s and W-2s

These are filled out by your employer and include information on how much you earned the year before and how much of it was kept for taxes. You'll get a W-2 if you're an employee. 1099s are the form for independent contractors. These show your earnings as “non-employee compensation.” If you got a 1099 and you think you're an employee, you were probably misclassified!

Note: You might get both forms or no forms at all, especially if you're paid in cash. This could also be misclassification!

The differences between these forms are important!

Depending on which form you get, you may have to pay higher taxes. The taxes you pay are different depending on which form you get. Sometimes employers will give you a 1099 (or no form at all) instead of a W-2 as a way to save themselves money and not give you other important benefits.

If you think this is happening to you, reach out to a Low Income Taxpayer Clinic (LITC). Find one here: taxpayeradvocate.irs.gov/lltc.
How can misclassification hurt you?

1. You have to pay higher taxes for Social Security and Medicare

Independent contractors (who receive 1099 forms) usually end up paying higher taxes because of the Self-Employment tax.

**What does this mean?**

If you're an employee, you only pay a 7.65% tax on your earnings, and your employer has to pay a matching 7.65% for you. If you're an independent contractor, you pay it all yourself.

This applies to you even if you don't have a Social Security number or any immigration status.

2. You have to budget for taxes yourself

If you're an employee, employers usually take out the taxes automatically from your paycheck. If you're an independent contractor, you have to put the money aside yourself to pay your taxes at the end of the year.

This can add up since you have to put away money for Social Security, Medicare, and federal income taxes, and sometimes also state and local income taxes. All together, these taxes could be up to a quarter or third of your income!

**Social Security Benefits**

The way you qualify for Social Security benefits is by building up Social Security credits.

The government gives you credits based on the amount of money you earn from working. This builds up over your lifetime.

If you're an employee, you automatically get Social Security credits because your employer pays your Social Security tax directly to the government and reports your earnings for you on the W-2 form. If you're classified as an independent contractor, you don't get the credits unless you file a tax return and report all of the money that you were paid as an independent contractor (e.g., on a 1099 form or in cash).

You should file a tax return whether you can pay the tax or not. The IRS has installment plans and other options for those who can't afford to pay. This applies even if you're undocumented.

**Employee Benefits**

Employees have the right to certain benefits, including:

- Minimum wage
- Overtime compensation if you worked more than 40 hours a week
- Unemployment insurance if you lost your job
- Workers compensation for injuries on the job
- Medical insurance, sometimes
- Family and medical leave
- The right to organize, unionize, and collectively bargain for better wages and working conditions
- Automatic Social Security credits

If you were misclassified and think you've missed out on any of these benefits, see the back cover for details about who you can call and how to fight back.

3. You miss out on benefits

You have the right to certain benefits as an employee like Social Security, Medicare, and a lot of others. If your employer calls you an independent contractor, you miss could out on these.
How do I know if I’m an employee or an independent contractor?

You’re most likely an employee if:

• You have a boss or manager for most of the time you’re working that job.
• Your boss or supervisor tells you how your work should be done, including how, when, and where you should work.
• Your boss gives you all the training, tools, or equipment to do your job if you get reimbursed by your employer if you pay for them.
• Your boss has the right to fire or demote you.
• All of your work is done for one company or person.
• Your boss needs to decide which one you are. It’s based on the facts of the situation.

If you’re a gig worker or your work is controlled by an app, you might be an employee like the back cover for people who can help you find out.

How can I fight misclassification?

The main way to do this is by filing an 8-K form and sending it to the Internal Revenue Service (IRS). They’re the government agency in charge of federal taxes like social security and the Self-Employment tax. Find more information on how to file an 8-K below.

The IRS collects taxes owed for up to 10 years after when a tax return is filed. Filing an 8-K can reduce your tax debt so you won’t owe extra money.

The 8-K is a form that asks you questions about your work, like why you think you’re an employee and not an independent contractor. You can find the 8-K here: [link].

For help filling it out, visit: [link].

After you complete the 8-K, fill out your tax return along with a Form 990 to report only the social security and Medicare taxes you owe for that year.

SS-8 Tips

• Fill out the whole form. If the question doesn’t apply to you, write “N/A” for that question. If you don’t understand something on the form, contact your nearest LITC. Check the box for more information!
• If you get both a 8-K and a 1099, you don’t need to file an 8-K, just an 1099.
• The 8-K and your tax return are sent to different places so double-check the address!

What happens next?

After you file an 8-K, the 8-K unit of the IRS will send a letter of advice, a case number, and a phone number where you can check on its status.

The 8-K unit will also reach out to your employer to hear their side. They may ask you for more information, too.

It can sometimes take a year or more to get your claim processed.

If the 8-K unit decides you’re an employee, and you still work for that employer, the employer should start withholding taxes, and give you a W-2 at the end of the year. Even if your employer doesn’t give you a W-2, you’re an employee! If the 8-K unit indicates you aren’t an independent contractor and file your tax returns using Form 1099 as long as you keep working for that employer.

If the 8-K unit says you’re not an employee, you can ask them to take a second look at your case. You can give them more information or tell them they didn’t consider everything you put on your original 8-K form.

How do I get a refund if I was misclassified and already paid the extra taxes?

File a Form 1040X (an amended tax return) with a Form 1099 to get a refund. You can only do this offer you’re filed as 8-K.

There’s also a time limit to claim your refund. You generally have 3 years from when the tax return was due or 2 years from the tax payment you’re trying to get back.

There are people who can help if you have questions about any of these forms, or if you’re facing misclassification. You can get help from an LITC.

LITCs provide free or low-cost legal help for low income people who are facing tax issues. They can help you file an 8-K and any other forms mentioned here. Find your closest LITC here.[link].
More ways to fight misclassification

Stay anonymous
The SS-8 isn’t confidential. If you feel unsafe filing one, Form 211 or Form 3949-a are confidential ways to report your employer to the IRS. You can find those forms at irs.gov.

These forms won’t reduce the amount of taxes you owe or make sure you’re getting Social Security credits. The best way to do that is by filing an SS-8.

Talk to your coworkers
If you think your employer is misclassifying you, chances are your coworkers are being misclassified too. Talk to them about their experience. You’re more likely to change things and be protected by the law as a group than as an individual.

File a Complaint
File with your State or Local Department of Labor. If they find out that your employer is misclassifying workers, your employer will have to start withholding taxes and giving their employees W-2s. (But if you want to take action for past misclassification, you may still have to take some of the steps listed earlier in the guide.) Contact your local or state labor office here: dol.gov/agencies/whd/state/contacts

For more help
Contact your nearest LITC:
taxpayeradvocate.irs.gov/litc

Contact Philadelphia Legal Assistance at philalegal.org or 215-981-3800.