

How does KDOL determine if a worker is an employee or an independent contractor?

The right of control, whether or not exercised, is the most important factor in determining the relationship. An employer-employee relationship exists when an employer has the **right** to exercise control over the manner and means by which the individual performs services. The right to discharge a worker at will and without cause is strong evidence of the right of direction and control.

A written contract that claims to create an independent contract relationship is of no effect if the practice of the parties shows that the employer retains the right to control the means and manner in which services are performed.

Generally, an employer-employee relationship is found to exist when the work being done is an integral part of the regular business of the employer and the worker does not furnish an independent business or professional service to the employer.

Reporting Misclassification

If you believe that you, or someone you know, are intentionally misclassified to avoid tax payments, workers compensation coverage and other legal obligations, reporting the concerns to the Kansas Department of Labor as well as the Kansas Department of Revenue is easy.

Report misclassification online at
<https://kdor.org/misclass/>
or
Contact the Kansas Department of Labor by email at
uitax@dol.ks.gov



Worker Misclassification

Employee or Independent Contractor?



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What is worker misclassification?

Misclassification of workers occurs when an employer incorrectly classifies workers as **independent contractors** rather than **employees**. Employers that misclassify workers may not be making appropriate withholdings or tax payments for their employees. This includes:

- Withholding Tax
- Social Security
- Unemployment Tax
- Workers Compensation

Intentional misclassification of workers is illegal and constitutes tax and insurance evasion.

Employers engaging in this practice may be subject to significant penalties and fines from the Kansas Department of Labor and the Kansas Department of Revenue.

Who determines if a worker is an employee or an independent contractor?

The Kansas Department of Labor is responsible for investigating worker classification by employers.

What is employment?

Employment is defined in K.S.A. 44-703, Chapter 44, Article 7. According to this statute, employment means:

Services performed by an individual for wages under any contract of hire is employment unless it is shown that:

Such individual has been and will continue to be free from control or direction over the performance of such services, under the individual's contract of hire.



Who is an employee?

An **employee** is anyone performing services for an employer who controls what will be done and how it will be done by the worker. This is true even if the employee has freedom of action. What matters is the right of the employer to control the details of how the services are performed.

Who is an independent contractor?

Independent contractors have an independent trade, business or profession. They offer their services to the public and are generally not employees. However, whether they are employees or independent contractors depends on the facts in each case. The general rule is that an individual is an independent contractor if the employer controls or directs only the result of the work and not the means and methods of accomplishing the result.