

# STATE OF NEVADA

## Misclassification of Workers for Unemployment Insurance

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The Nevada Department of Employment, Training and Rehabilitation is a proactive workforce and rehabilitation agency

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# Unemployment Insurance

- UI law was enacted to provide temporary partial income replacement to workers who become unemployed through no fault of their own.
- Benefits are financed
- by a payroll tax on employers.
- Taxes are set aside in a trust fund that can only be used to pay benefits.

# Unemployment Benefits

- Unlike welfare, entitlement to Unemployment Insurance benefits is not based on need.
- The amount of weekly benefits are determined by an individual's earnings in previous employment.

# Definitions: Misclassified Workers

- For Unemployment Insurance purposes, any worker that should be classified as an employee by an employer, but is not.

# Definitions: Employers

- Generally, any employing unit that has paid wages for employment in Nevada of \$225 or more during a calendar quarter.
- Pursuant to federal and state law, special thresholds exist for non-profit, agricultural and domestic employers.

# Definitions: Employment

- Service for wages under any contract of hire, written or oral, express or implied.
- Unless specifically excluded, payment for personal services is presumed to be employment and is subject to unemployment taxes.



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# Nevada UI Law: Independent Contractors

- Nevada Unemployment Compensation law does not define the term Independent Contractor.
- Nevada UI law uses a three-part test that is commonly referred to as the “ABC test”.
- Under the ABC test, payment for personal services is deemed to be employment unless all three provisions of NRS 612.085 are met.



# Nevada UI Law: Burden of Proof

- To exclude services, the burden of proof rests on the employer to demonstrate that all three conditions of the ABC test are met.
- A written contract or the issuance of a 1099 form does not, in itself, establish Independent Contractor status for Unemployment Insurance purposes.

# Nevada Revised Statute (NRS) 612.085

## **NRS 612.085 “Employment”: Services deemed employment unless specific facts shown.**

Services performed by a person for wages shall be deemed to be employment subject to this chapter unless it is shown to the satisfaction of the Administrator that:

1. The person has been and will continue to be free from control or direction over the performance of services, both under his contract of service and in fact;
2. The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprises for which the service is performed; **and**
3. The service is performed in the course of an independently established trade, occupation, profession or business in which the person is customarily engaged, of the same nature as that involved in the contract of service.

# Misclassified Workers: Methods of Discovery

- Benefit Claim Investigations
  - Employer Audits
- Inter-Agency Referrals
- Public Tips
- Internet Registration Process

# Misclassified Workers: Impact on UI Benefits

- A Wage Protest (Obstructed Claim) is assigned to a local filed office and an investigation is conducted.
- Process will delay payment of benefits.
- Claimants and employers both may appeal determinations.

# Misclassified Workers: A Growing Business Trend

- Focused primarily with construction in the past.
- Currently, misclassification is seen across all industry types – delivery services, cosmetology services, mortgage companies, etc.
- Third party companies advise employers how to make employees independent contractors.

# Misclassified Workers: Not just Independent Contractors

Misclassification of workers comes in several different forms:

- Independent Contractors – most common
- Misclassification of payments
- Misuse of legal entities
- Referral service
- Misuse of legitimate statutory exclusions

# Thank you!



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