

Worker Misclassification Audit Triggers

Claims of employee misclassification are on the rise, due in large part to stepped-up audit and enforcement efforts by the federal government and states targeting employers that improperly treat employees as independent contractors.

The focus on how employers classify their workers is likely to increase as the Internal Revenue Service (IRS) and Department of Labor carry out plans to audit thousands of companies — including small businesses — for possible misclassifications. What's more, state officials, searching for ways to boost revenue, have also intensified investigations of state wage and hour laws.

Here are some common worker misclassification audit triggers:

1. The 1099 independent contractor files a claim for unemployment benefits. This creates suspicion because independent contractors are not eligible for unemployment.
2. The 1099 independent contractor files a workers' compensation or disability claim against the employer. If someone is truly an independent contractor, they should carry workers' compensation and disability insurance on themselves, because they are not eligible through an employer.
3. A worker receives a Form W-2 and a 1099 from the same employer in one year because they converted from a 1099 independent contractor to a direct hire of the company. However, if they performed the same work as a 1099 independent contractor and a W-2 employee, the IRS may wonder why they were not originally classified as an employee.
4. The worker feels they are being improperly treated as a 1099 independent contractor and files an unpaid minimum wage or overtime complaint with the Department of Labor's Wage and Hour Division.
5. The worker feels they are being improperly treated as a 1099 independent contractor and files a Form SS-8 with the IRS for their own classification determination, or files a Form 8919, *Uncollected Social Security Tax and Medicare Tax on Wages*, with their personal income tax return.
6. The IRS is anonymously alerted about the worker or the employer not paying taxes.
7. Independent contractors have been working for a particular company for a long period of time.
8. High 1099 volume.