

# Worker Misclassification: How Job Titles Affect workers' Comp And Other Benefits

*A trend of hiring contingent workers rather than employees is raising concerns about worker misclassification and its effect on workers' compensation.* United Parcel Service (UPS) and FedEx Ground are major competitors in the U.S. package delivery service. UPS' iconic brown and FedEx Ground's navy blue uniforms are familiar to millions of people. For the delivery drivers, differences between the companies go much further than the color of the uniform.

UPS considers its delivery drivers to be employees, according to an article by David Bensman, a professor of labor studies and employment relations at Rutgers University. As employees, UPS drivers are eligible for benefits and rights commonly given to workers in the U.S., including workers' compensation.

FedEx Ground's 27,000 workers are generally classified as independent workers, Bensman reports. Because of this, the company is not required to provide benefits to these employees or follow certain labor laws. The classification means that FedEx Ground delivery drivers may not be eligible for workers' compensation benefits if they are injured.

How can similar workers at similar companies be classified so differently? The answer has to do with the complex laws that govern worker classification in the U.S. and a rising trend of hiring contractors, or contingent workers, rather than employees. The trend is potentially damaging to the rights of injured workers.

## **What Is An Independent Contractor?**

According to the Department of Professional Employees, AFL-CIO, an independent contractor is generally a worker who has a contract to provide a service for a business or person. The independent contractor is not supposed to be under the employer's control except as outlined in the contract. Government entities use several standards to determine who is an independent contractor.

The Internal Revenue Service (IRS) examines a series of factors that encompass control over behavior, financial matters and the type of relationship a worker and employer have. The Department of Labor uses an "economic reality" test to determine whether a worker is economically dependent on the employer. States, including Pennsylvania, may have their own standards for classifying some or all workers.

Because of the complexity, some employers mistakenly misclassify employees as independent contractors. Others may intentionally classify workers as independent contractors as a cost-saving measure, advocates for workers and even government officials have said. According to Bensman, the federal deputy Secretary of Labor said in 2010 that much worker misclassification is intentional and that employers misclassify workers to reduce labor costs.

## **How Often Are Workers Misclassified?**

The problem is serious. A U.S. Department of Labor study in 2000 found that up to 30 percent of employers had misclassified some of their employees. Regardless of whether they are properly classified, the number of workers in the U.S. who are independent contractors or contingent workers is growing. Bensman reports that 42.6 million workers are in contingent job situations.

For workers, being misclassified as an independent contractor

can deprive them of benefits and rights given to employees, including company-sponsored health insurance, workers' compensation, unemployment insurance and the right to join unions. A worker who is injured on the job may be denied workers' compensation benefits if he or she is considered an independent contractor, leading to further financial uncertainty, medical expenses and other losses.

## **Reducing Employee Misclassification**

Given these problems – and the fact that the government misses out on unemployment and workers' compensation taxes when workers are misclassified – efforts are underway to root out employee misclassification. The Department of Labor and the IRS both investigate companies for suspected employee misclassification. In 2011, Pennsylvania lawmakers enacted a law that makes it difficult for employers to classify construction workers as independent contractors. Additionally, workers have filed lawsuits, including claims against FedEx. The FedEx lawsuits have had mixed results, according to Bensman and others.

As a worker, you may not be out of options if you are injured on the job but have the status of an independent contractor. An experienced workers' compensation attorney will understand the factors used to determine how workers in your industry are classified as employees or independent workers and can help you show that you are an employee who is entitled to the workers' compensation benefits you deserve.

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