



Employee Misclassification



What is Employee Misclassification?

The misclassification of employees as something other than employees, such as independent contractors, presents a serious problem for affected employees, employers, and to the entire economy.

Misclassified employees are often denied access to critical benefits and protections – such as workers’ compensation, family and medical leave, overtime, minimum wage and unemployment insurance – to which they are entitled.

Employee misclassification is payroll fraud and generates substantial losses to the Commonwealth’s revenues, as well as state unemployment insurance and workers’ compensation funds.



Importance of Misclassification

A recent study found that one third of audited employers in certain industries misclassify their employees. By failing to purchase workers’ compensation insurance, pay unemployment insurance and payroll taxes, or comply with minimum wage and overtime laws, employers lower their costs up to 40%, placing other employers at a competitive disadvantage.

The misclassification of employees as “independent contractors” undermines businesses that follow the law, deprives the Commonwealth of millions of dollars in tax revenues, and prevents workers from receiving legal protections and benefits.

VOSH Policy

The VOSH Program conducts thousands of safety and health inspections annually, and starting **July 1, 2015**, will take the following actions in worker misclassification cases:

- If VOSH penalties are proposed, penalty reductions for size and good faith will **NOT** be afforded to the employer.
- In construction inspections each contractor will be asked to provide its Department of Professional and Occupational Regulation (DPOR) contractor's license AND proof of the DPOR license for any subcontractors.



- Make a referral to DPOR if a contractor has used an unlicensed subcontractor (DPOR sanctions may include fines, probationary terms, suspension or license revocation).
- For contracts under \$1,000, VOSH will make a referral to the Virginia Employment Commission (VEC) and/or the Virginia Workers' Compensation Commission (VWCC) for potential audits of employment practices. Referrals may be made for contract over \$1,000 as well.





▶ Preventing Employee Misclassification

Virginia Occupational Safety and Health (VOSH)

Virginia Department of Labor and Industry

"The Department today is committing itself to aggressively pursuing Governor McAuliffe's initiative to root out the destructive practice of misclassification of workers in Virginia.

Misclassification of workers as independent contractors constitutes payroll fraud, and denies hard-working Virginia employees of basic legal protections such as workers' compensation, family and medical leave, and unemployment insurance. Misclassification also cheats those honest employers and contractors who properly classify employees, since employers who misclassify can undercut their bids due to lower operating costs."

C. Ray Davenport
Commissioner

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Virginia Department of Labor and Industry



Main Street Centre
600 East Main Street, Suite 207
Richmond, Virginia 23219
Phone: 804-371-2327

www.doli.virginia.gov

REGIONAL OFFICE LOCATIONS

Abingdon Field Office

The Johnson Center
468 East Main Street, Suite 114
Abingdon, Virginia 24210
Phone: (276) 676-5465 Ext. 101

Central Region Office

North Run Business Park
1570 East Parham Road
Richmond, Virginia 23228
Phone: (804) 371-3104

Lynchburg Field Office

3704 Old Forest Road, Suite B
Lynchburg, Virginia 24501
Phone: (434) 385-0806 to 09

Northern Virginia Region Office

9400 Innovation Drive, Suite 120
Manassas, Virginia 20110
Phone: (703) 392-0900
TDD: (703) 392-0165

Southwest Region Office

Brammer Village
3013 Peters Creek Road
Roanoke, Virginia 24019
Phone: (540) 562-3580

Verona Field Office

201 Lee Highway
P.O. Box 77
Verona, Virginia 24482
Phone: (540) 248-9280

Tidewater Region Office

Interstate Corporate Center,
Building 6
6363 Center Drive, Suite 101
Norfolk, Virginia 23502
Phone: (757) 455-0891



DEPARTMENT OF LABOR AND INDUSTRY