

Misclassification of Workers & Arkansas Law

A.C.A. § 11-10-210

Misclassification of a worker occurs when a worker is treated as contract labor when the law does not allow for such classification. Arkansas law determines the proper classification of a worker for unemployment insurance tax purposes. A.C.A. § 11-10-210 is applied to determine the correct classification of a worker. The presumption is that a worker is an employee unless the business entity paying the worker can establish all three parts of the test as follows:

“Service performed by an individual for wages shall be deemed to be employment subject to this chapter irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the Director that:

1. The individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact, and
2. (A) The service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; or (B) The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.








If the employer cannot establish that the worker meets part 1 and either part 2(A) or part 2(B) of the test, then the worker must be classified as an employee and UI taxes reported and paid.



Looking to better understand the rules and requirements that apply to the classification of workers? Please reach out to ADWS Employer Accounts for additional information at [501-682-3798](tel:501-682-3798).

Misclassification of Workers

Employee or Independent Contractor?

EMPLOYEE		INDEPENDENT CONTRACTOR
Working for someone else's business		Running their own business
Paid hourly, salary, or by piece rate		Paid upon completion of a project
Uses employer's materials, tools, and equipment		Provides own materials, tools, and equipment
Typically works for one employer		Works with multiple clients
Continuing relationship with the employer		Temporary relationship until project is completed
Employer decides when and how the work will be performed		Decides when and how they will perform the work
Employer assigns the work to be performed		Decides what work they will do



Examples of when a worker should be classified as an employee, not as contract labor:

- Worker is given a work schedule.
- Worker is supervised.
- Worker is provided training.
- Worker is given instructions in the performance of the duties.
- Worker's pay is not negotiated.
- Worker performs a service at the employer's place of business or at places designated by the employer for an extended period of time.
- Worker performs the service as a representative of the employer.
- Worker uses the employer's tools, equipment and/ or supplies.
- Worker is not established in own business of the same nature as the employer.