

# Worker Misclassification



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# The Problem: misclassification

10-30% of employers may misclassify their employees as independent contractors. *(USDOL WHD)*

Misclassification undermines law-abiding businesses...unfair advantage for non-compliant businesses when competing or bidding for work.

Misclassified workers are wrongfully denied access to important benefits and protections, such as:

- Minimum wage and overtime pay
  - Workers' compensation
  - Family and medical leave

Misclassification complicates the collection of UI benefits.

# Our approach...

- July 31, 2014 Utah requested supplemental funding to detect and prevent misclassification.
- We proposed to: investigate, audit, develop employer and community partner outreach, identify and communicate common trends, train other auditors.
- Three experienced auditors were promoted and asked to focus on misclassification.

# The initial plan...

1. Audit large employers (1000+ employees); update auditing software to decrease processing time to import data;
3. Audit PEO's (Professional Employers Organizations);
4. Audit employers who issued 300+ 1099's;
5. Perform 1099 non-match investigations (employers who are not registered with UI). If warranted, convert investigation to audit;
6. Develop employer's outreach program to educate them on proper classification of workforce;
7. Identify Trends for misclassification of workers and train other auditors

# Auditor II vs. Auditor III

<b>4Q2014</b>	Misclassified Employees (MCE)	Wages Under Reprtd (WUR)	Contributions Under Reprtd (CUR)	Audit Hours	# of Audits	Hours / audit	MCE/audit	WUR/audit	CUR/audit
Auditors II	798	\$ 5,791,317.59	\$ 53,927.33	2199	236	9.3	3.4	\$ 24,539.48	\$ 228.51
Auditors III	196	\$ 2,666,825.33	\$ 32,875.41	483	30	16.1	6.5	\$ 88,894.18	\$ 1,095.85

<b>1Q2015</b>	Misclassified Employees (MCE)	Wages Under Reprtd (WUR)	Contributions Under Reprtd (CUR)	Audit Hours	# of Audits	Hours / audit	MCE/audit	WUR/audit	CUR/audit
Auditors II	741	\$ 4,805,625.33	\$ 42,176.51	2150.5	217	9.9	3.4	\$ 22,145.74	\$ 194.36
Auditors III	423	\$ 1,832,662.87	\$ 23,095.66	517	30	17.2	14.1	\$ 61,088.76	\$ 769.86

<b>2Q2015</b>	Misclassified Employees (MCE)	Wages Under Reprtd (WUR)	Contributions Under Reprtd (CUR)	Audit Hours	# of Audits	Hours / audit	MCE/audit	WUR/audit	CUR/audit
Auditors II	800	\$5,157,545.01	\$48,557.73	2665	274	9.7	2.9	\$18,823.16	\$177.21
Auditors III	716	\$5,247,034.00	\$67,216.66	666	24	27.8	29.8	\$218,626.42	\$2,800.69



# Early findings...

Category	# Audits	Average # 1099s issued (in 2013)	Average # Misclassified workers	Average \$ Under-reported wages	Average \$ Under-reported Contributions
Construction	14		28 (395/14)	\$202,315 (\$2,832,411/14)	\$3,259 (45,625/14)
Direct Selling (door to door)	1		14	\$72,708	\$1,009
Rehab/Health	1		65	\$75,374	\$9,264
Schools (mostly Reimbursable/PEO clients)	7		40 (283/7)	\$100,110 (700770/7)	\$1,085 (7,600/7)
Transportation	1		22	\$390,881	\$1,284
Entertainment	2		63 (126/2)	\$48,800 (97,600/2)	\$3,005 (6,010/2)
IT	3		17 (519/3)	\$136,615 (409,845/3)	\$1,839 (5,517/3)
Hair Salons	2		30 (60/2)	\$170,297 (340,593/2)	\$2,740 (5,481/2)
Real Estate	4		4 (17/4)	\$22,510 (90,039/4)	\$79 (318/4)
Insurance	2		0	0	0
Large	2		2.5 (5/2)	\$180,693 (361,385/2)	\$2,614 (5,228/2)
#1099s categories (av)					

# Lessons learned...

300+ 1099s: there are no Non-match companies that make sense to audit (insurance, multi-level marketing);

There are a only few 1099 match employers that remain to audit;

Large companies are not productive, audit smaller companies;

3<sup>rd</sup> party construction & computer industries act as payroll company that also issues 1099s;

Out of state 1099 non-match companies are more difficult and time-consuming than expected so target in-state.

# Meanwhile, back at the ranch...

Legislation created the Worker Classification Enforcement Council.

(Labor Commission = workers' compensation)

(Dept. of Commerce = construction contractors, licensing)

(Workforce Services = unemployment insurance)

(Tax Commission = employers paying taxes not registered with Workforce)

This multi-agency partnership greatly enhances the free flow of information related to misclassification.

Results: \$2.3 million past due contributions collected, from 283 employers.



# The press release...

*The Department of Workforce Services Unemployment Insurance Division (DWS/UI) completes both “random” and “targeted” audits on Utah employers. In the last five and one-half year period, through June 30, 2015, DWS/UI completed 6,131 “random” audits, covering 1.6 billion in total wages. The random audits identified approximately 47 million in total unreported wages to 6,994 were misclassified as “independent contractors” averaging \$7,666 in unreported earnings to 1.14 misclassified worker per random audit completed.*

*During the same period, DWS/UI completed 1949 “targeted” audits of Utah employers, covering 2.6 billion in total reported wages. These audits primarily use IRS form 1099 information to identify potential unreported workers. The targeted audits identified over 125 million in total unreported wages to 21,581 workers who were misclassified as independent contractors, averaging, \$64,135 in unreported earnings to 11.08 misclassified workers per targeted audit completed.*

# Summary...

“The correct classification of workers as employees or independent contractors has critical implications for the legal protections that workers receive, particularly when misclassification occurs in industries employing low wage workers.” *USDOL WHD Administrator David Weil*

We anticipate business models will continue to evolve and include more and more misclassified workers. Our employer outreach efforts will increase accordingly.





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