



Employee Misclassification

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What Minnesota Statutes Explain

290.92

- Defines wages, employee, employer

290.01

- Defines Internal Revenue Code

289A.31

- Explains tax liability and no employee credit for taxes paid

Case Law, Rulings

Common Law Rules

Behavioral Control

- Instructions given
- Training provided

- Reimbursed expenses
- Services available to the public
- Degree of investment and ability to make a profit OR suffer a loss
- Structure of payment

Type of relationship

- Existence of a contract
- Permanency of relationship
- Services are a key aspect of regular business
- Right or ability to receive benefits

How do we discover misclassification?

External

- Tip Line
- IRS
- Other state agencies

Internal

- Audit selection
- Referrals

What Happens after Discovery?

Auditors Get Involved

Auditors are assigned to:

- Research
- Decide to audit or close

Open an audit and:

- Send appointment letter
- Interview taxpayer
- Collect documentation
- Issue worker questionnaires

Determination and Follow-Up

Determination is based on facts and common law

- No Change Letter or Consent to Change (CTC)
- Closing Conference
- Order of Assessment
- Referrals

Multiple considerations:

- Complexity
- Number of classifications
- Number of audit issues
- Size of business
- Responsiveness and cooperation

Education

How does Revenue offer education?

- Auditor during audit process
- Department of Revenue Website
- New Business Classes

Work Misclassification Project

- Educates taxpayers about classification
- Determines who needs education
- Sends information and resources

Planned for every three years

- 2021
 - Periods 2016 to 2018
- 2024
 - Periods 2019-2021

Other Sources of Education

Internal Revenue Service

- Website
- Videos
- Webinars
- Publications
- Forms

Barriers to Enforcement

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- Tied to federal law
- Not uniform with DEED and DLI
- Highly fact intensive test
- Some employees want to be misclassified
- Lack of communication with workers

Questions

Thank You!

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