



Misclassified Employees Screening Tool

A misclassified employee is a taxpayer who was paid for work as an independent contractor (receiving a Form 1099-MISC or cash payments) but their boss determined when, where, and how they performed the work.

HOW TO USE THIS TOOL

If you think a taxpayer's employment has been misclassified, ask them the questions in **PART 1** of this tool. If you determine a taxpayer's employment has been misclassified, use **PART 2** to help the taxpayer decide how they would like to proceed.

PART 1 - Employee v. Independent Contractor Questions:

(A "Yes" answer to any of the following questions may indicate an Employee-Employer relationship)

1. Are you required to follow your employer's instructions in completing the job or accomplishing the task?
2. Did the company/employer provide the training necessary for you to complete the job?
3. Are your specific personal services required for successful completion of the job?
4. Are your services crucial to the success or continued existence of the company?
5. Does your employer set your work hours?
6. Does the company hire, supervise, or pay any of your assistants?
7. Are you prohibited from seeking assignments with other companies or from refusing assignments offered by the company (i.e. can you refuse to do work or certain projects for the company and still be allowed to do other work for them)?
8. Does your employer specify the location where the work must be performed?
9. Does your employer direct the order or sequence of tasks to be performed?
10. Are you paid by the hour, week, or month, rather than for the completion (or stage of completion) of the project?
11. Do you work only for this company?
12. Does the company provide equipment, tools, and materials?
13. Is the work performed on the company's premises or using the company's facilities?
14. Does the company provide you a minimum "salary" and therefore shield you from the risk of profit or loss on the job?
15. Is the company required to pay you for time spent even if the job is not completed?

PART 2 - Options for a taxpayer whose employment has been misclassified:

Option 1: Call Texas Rio Grande Legal Aid (210-212-3747) to have their return prepared as a misclassified employee and request that the IRS review their classification. This is out of scope for VITA. It could lower the amount of self-employment tax for which they are liable. Let the taxpayer know:

- a. The tax return will not be completed today.
- b. The IRS may contact the employer who issued the 1099-MISC as part of this process.

Option 2: File the tax return today as an independent contractor and pay the full amount self-employment tax as calculated for a self-employed individual. This is within scope for VITA. The taxpayer still has the option to contact Texas Rio Grade Legal Aid afterward.