

# MISCLASSIFICATION IN THE TRUCKING INDUSTRY

## WHAT IS MISCLASSIFICATION?

A misclassification results in an employee not receiving their labour standards entitlements under the Canada Labour Code. Misclassification often occurs when an employer considers a worker to be an independent contractor rather than an employee.

### Example of misclassification:

A worker is misclassified as an independent contractor because they are paid through an incorporated business entity.

## HOW TO KNOW IF A WORKER IS BEING MISCLASSIFIED?

If a worker meets the following criteria, they are likely an employee for the purposes of the Canada Labour Code:

- the employer exercises control over their work (example: work location, schedule)
- the employer provides the tools to do the work (example: the truck/trailer)
- the worker has no risk of loss and no chance of profit (example: the worker does not assume the costs of the work to be redone)
- the worker is integrated into the company (example: the employer logo is used on the worker's uniform, truck, and other tools)



For guidance on determining the employer/employee relationship, please consult the Interpretations, Policies and Guidelines on Determining the Employer/Employee Relationship: [IPG-069](#).

## EMPLOYEE ENTITLEMENTS

Under Part III of the Canada Labour Code, employees are entitled to protections such as:

- up to 4 weeks of annual vacation with pay
- 10 paid days of general holidays
- 3 paid days of personal leave
- up to 10 paid days of medical leave per year
- overtime pay (increased wages or compensatory time off)
- recourse against unjust dismissal

## HOW DOES THE LABOUR PROGRAM DEAL WITH MISCLASSIFICATION?

- counselling the employer and obtaining voluntary compliance, when possible
- investigating employee complaints and inspecting workplaces
- non-compliance may lead to:
  - a payment order including administrative fees
  - a compliance order
  - Administrative Monetary Penalties (AMPs)
  - public naming of employers, or
  - prosecution

## MISCLASSIFICATION UNDER THE CANADA LABOUR CODE AND STATUS UNDER THE INCOME TAX ACT.

Determining the employment status under the Canada Labour Code is independent of an employment status determination made under the Income Tax Act. This means, a worker who is considered an employee under the Code may be classified differently under the Income Tax Act.

For more information on misclassification and counselling on this subject, contact the Labour Program: **1-800-641-4049** or Teletypewriter (TTY) **1-800-926-9105**

For tax-related inquiries, contact the Canada Revenue Agency: **1-800-959-8281**