



WORKER MISCLASSIFICATION NOTICE

New Jersey Department of Labor and Workforce Development

NEW JERSEY LAW PROHIBITS WORKER MISCLASSIFICATION NOTICE OF EMPLOYEE RIGHTS & EMPLOYER RESPONSIBILITIES

WHAT IS MISCLASSIFICATION?

- Misclassification is the practice of an employer improperly classifying employees as independent contractors.
- Misclassification may illegally deprive workers of basic rights, protections, and benefits guaranteed to employees such as the right to be paid the **minimum wage**, the right to **overtime pay**, **time and mode of pay** protections, the protection against **illegal deductions** from pay, **unemployment compensation**, **temporary disability benefits**, **family leave insurance benefits**, **workers' compensation**, **family leave and earned sick leave**.
- Often when workers are paid in cash "off the books", it may be a method to hide misclassification or other employment related legal obligations.

AM I AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR?

Under the New Jersey Unemployment Compensation Act and New Jersey Labor Law, Wage Payment Law, Wage Collection Law, Temporary Disability Benefits Law (including sections providing for Family Leave Insurance) and Earned Sick Leave Law, if you are paid for your service and are paid, you are **presumed to be an employee**, unless the employer can prove all three of the following:

- (A) You have been and will continue to be free from control or direction over performance of the service, both under a contract of service and in fact, and
- (B) The service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) You are customarily engaged in an independently established trade, occupation, profession or business.

If this is referred to in New Jersey as the "ABC test" for independent contractor status, please go to www.myworkrights.nj.gov to learn about the factors considered for independent contractor status.

DO I HAVE TO PROVE THAT I AM AN EMPLOYEE?

- No, if you worked and were paid, you are presumed to be an employee. It is the employer's burden to show that all three parts of the ABC test are met. If the employer cannot prove all three parts of the ABC test, then you are presumed to be an employee.
- If you do not know you are misclassified, email misclass@doj.nj.gov.
- **DOES IT MATTER IF I RECEIVED AN IRS FORM 1099, AS OPPOSED TO IRS FORM W-2?**
 - No, it does not matter which federal tax form the employer uses to report earnings.
 - What matters are the facts surrounding your working relationship with the employer and the application of the ABC test to those facts.

HOW CAN I PROVE THAT I AM AN INDEPENDENT CONTRACTOR AGREEMENT BEFORE HIRING ME, DOES THAT MAKE ME AN INDEPENDENT CONTRACTOR?

- No, Your employment status is determined based on an analysis of all the facts surrounding your relationship with the employer under the ABC test.

REPORTING MISCLASSIFICATION

If you have been misclassified and would like to file a claim, you can do so here: <https://wagehour.do.state.nj.us/default.htm>

To seek further information: EMAIL: misclass@doj.nj.gov WRITE: Employee Accounts Division of Wage and Hour Compliance, P.O. Box 389, Trenton, NJ 08625-0389
FAX: 609-292-2321 NJ GOV/LABOR
CALL: 609-292-2321 NJ GOV/LABOR
1 John Fitch Plaza, P.O. Box 942, Trenton, NJ 08625-0942

• Whichever way you choose to reach out, multilingual staff will be able to assist you and translation assistance made available as needed

• You can also visit www.myworkrights.nj.gov to learn more about misclassification.

MW-999 (5/20)

NEW JERSEY MINIMUM WAGE

New Jersey Department of Labor and Workforce Development

Wage and Hour Law Abstract | N.J.S.A. 34:11-56a et seq.

STATUTORY MINIMUM WAGE RATE Employees are to be paid not less than the New Jersey minimum wage in accordance with the schedule below.

Date	Most Employers	Seasonal & Small Employers (fewer than 6)	Agricultural Employers	Cash Wage for Tipped Workers	Long-Term Care Facility Direct Care Staff
1-1-2021	\$12	\$11.10	\$10.30	\$4.13	\$15
1-1-2022	\$13	\$11.90	\$11.05	\$5.13	\$16
1-1-2023	\$14.13	\$12.93	\$12.01	\$5.26	\$17.13
1-1-2024	\$15.13	\$13.73	\$12.81	\$5.26	\$18.13

* The minimum wage rates for 2024 will be at least the amounts listed above, but could be higher based on the Consumer Price Index (CPI).

OVERTIME Overtime is payable at the rate of 1.5 times the employer's regular hourly rate for all overtime in excess of 40 in any week except where otherwise specifically provided by wage order.

- Exempt from the overtime entitlement are:
- executive, administrative, and professional employees
 - employees engaged in labor on a farm or relative to raising or care of livestock; and
 - limousine drivers.

WAGE ORDER AND REGULATIONS Employees in the occupations found below are covered by this wage order and regulations and must be paid not less than the statutory minimum wage rate.

- First processing of farm products
- Food service (restaurant industry)
- Hotel and motel
- Seasonal amusement

These regulations are contained in N.J.A.C. 12:26-11, et seq.

Enforced by: Wage & Hour Division and Contract Labor Commission

New Jersey Department of Labor & Workforce Development • P.O. Box 389 • Trenton, New Jersey 08625-0389
Division of Wage and Hour Compliance • P.O. Box 389 • Trenton, NJ 08625-0389
New Jersey Department of Labor and Workforce Development • Wage & Hour Division and Contract Labor Commission

UNEMPLOYMENT COMPENSATION

New Jersey Department of Labor and Workforce Development

Your employer is subject to the New Jersey Unemployment & Temporary Disability Benefits Laws

Unemployment Insurance - Benefits are payable to workers who lose their jobs or who are working less than full time because of a lack of full-time work that meet the eligibility requirements of the law. If you become totally or partially unemployed, file a claim for unemployment insurance benefits as soon as possible. The easiest, quickest way is to file online at myunemployment.nj.gov. You can also file a claim over the phone by contacting our Reemployment Call Centers at one of the numbers listed below. Note, if you were a maritime employee in the last 18 months or live outside of the United States, you must file your claim over the phone. Be prepared to have information about yourself, your employer and your work history available when filing your claim.

Cumberland Call Center: 1-866-507-2340 Freehold Call Center: 732-761-0020

Unemployment City Call Center: 1-800-601-4100 Out of State: 1-888-795-6672

Disability Insurance - Benefits are payable to New Jersey workers who suffer a non-work-related illness, injury, or other medical condition that prevents them from working. Temporary disability insurance coverage includes new and expecting mothers during their final weeks of pregnancy and recovery. If you become disabled and wish to apply for disability benefits, you should be asking whether your employer participates in the disability insurance plan or has a private insurance plan.

New Jersey State Disability Insurance Plan* ("state plan")

If you are covered under the state insurance plan, you may apply for disability benefits (or download a paper application – Form DS-1) online at myleavebenefits.nj.gov. Applying online is faster. Submit the completed paper application (fax to 609-984-4136 or email to disability@doj.nj.gov). If an approved private plan, New Jersey State Disability Insurance Plan (NJSDIP), is available for you, you may elect to enroll in that plan.

Private Disability Insurance Plan ("private plan") - New Jersey employers have the option of providing coverage to their employees through an approved private disability insurance plan. If you are covered under a private plan, your employer's insurance carrier is responsible for processing and paying your claim. If you become disabled, ask your employer for the form you need to claim benefits under the private plan.

Who pays for Unemployment & Temporary Disability Programs? These programs are paid for by payroll taxes paid by employers and employees. Your employer is authorized to deduct worker contributions (tax from your wages). The deductions must be noted on your pay envelope, paycheck, or on some other form of notice. The amount of wages that are taxable changes from year to year. The deduction may be allocated at varying rates to the Unemployment Insurance Trust Fund, the Temporary Disability Insurance Trust Fund, and the Workers' Compensation Trust Fund. If an approved private plan, New Jersey State Disability Insurance Plan (NJSDIP), is available for you, you may elect to enroll in that plan.

Enforced by: NJ Department of Labor and Workforce Development, Division of Temporary Disability Insurance, P.O. Box 387, Trenton, NJ 08625-0387

For more information, visit myleavebenefits.nj.gov or, from the Office of Constituent Relations, P.O. Box 110, Trenton, NJ 08625-0110 • 609-777-3200. The New Jersey Department of Labor and Workforce Development is an equal opportunity employer with equal opportunity programs. Auxiliary aids and services are available upon request to individuals with disabilities.

Display this poster in a conspicuous place

THE NEW JERSEY SAFE ACT

This Notice Must Be Posted in a Conspicuous Place

New Jersey SAFE Act

N.J.S.A. 34:11C1 et seq.

Leave of absence to address domestic or sexual violence

The New Jersey Security and Financial Empowerment Act ("NJ SAFE Act") provides that certain employees are eligible to receive an unpaid leave of absence, for up to 20 days in a 12-month period, to address circumstances resulting from domestic violence or a sexual violence offense.

Eligible Employees To be eligible, the employee must have worked at least 1,000 hours during the immediately preceding 12-month period. Further, the employee must have worked for an employer in the State of New Jersey for 25 or more employees.

Covered Reasons for NJ SAFE Act Leave NJ SAFE Act leave may be taken for the purpose of engaging in any of the following activities by (1) an employee who is a victim of domestic violence, or a sexually violent offense, or (2) an employee whose parent-in-law, sibling, grandparent, grandchild, child, or employee who is a victim of domestic violence, or a sexually violent offense, or (3) an employee who is a victim of domestic violence, or a sexually violent offense, or (4) an employee who is a victim of domestic violence, or a sexually violent offense, or (5) seeking legal assistance or remedies to ensure health and safety (6) Attending, participating in or preparing for a criminal justice proceeding relating to an incident of domestic or sexual violence.

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LABOR ON A FARM AT PIECE-RATE Employees engaged on a piece-rate basis to labor on a farm shall be paid for each day worked not less than the minimum hourly wage rate multiplied by the total number of hours worked.

PENALTIES Any employer who violates any provisions of this act shall be guilty of a disorderly persons violation and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000. As an alternative to or in addition to any other sanctions provided by law for violations, the Commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation. The employer shall also pay the Commissioner an administrative fee equal to not less than 10% or more than 25% of any payment due to employees. Penalties for violation of this order are set forth in N.J.S.A. 34:11-56a(2).

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Please stop in a conspicuous place. **Date Posted:** Labor laws change frequently. Contact your distributor to ensure that you are in full compliance with required State and Federal posting requirements at least once a year. LaborLawCenter.com, LLC. All rights reserved.

REPORTING & RECORDKEEPING REQUIREMENTS NOTICE

New Jersey Department of Labor and Workforce Development

Chapter 194, Laws of New Jersey, 2009, Relating to Employer Obligation to Maintain and Records Regarding Wages, Benefits, Taxes and Other Compensation and Assessments Pursuant to State Wage

