

UNDERSTANDING MISCLASSIFICATION, MISCODING & FRAUD

Employers who comply with the state's labor laws should not be put at a competitive disadvantage by businesses that do not adequately insure their employees.

This is why the Department takes seriously accusations of misclassification, miscoding, and fraud committed by employers doing business in Vermont.

A team of trained investigators and attorneys is prepared to respond promptly to complaints filed with the Department.

Our staff will shut-down non-compliant businesses and impose civil penalties, as necessary, but the Department's primary goal is to educate employers of their legal responsibilities and achieve voluntary compliance. In some cases of non-compliance, the Office of the Attorney General may also seek criminal penalties.

Misclassification

Misclassification occurs when an employer improperly classifies employees as "subcontractors" or "independent contractors" to avoid paying for benefits such as workers' compensation insurance coverage.

The test for misclassification in workers' compensation insurance coverage is different than the test for Unemployment Insurance.

In Vermont, it's assumed that anyone compensated for work is an employee UNLESS the employer can demonstrate otherwise, or there is a specific exemption in law.

If you are an employer who has one or more employees, and you hire another "individual" to perform work in the course of your business, most likely that individual is your employee. This is true even if the individual receives a "commission."

An independent contractor, on the other hand, is someone you hire who performs a job that is **not similar or connected to your business and whose work you have no direction or control over.**

Misclassification Examples

Independent contractor: You have a property management company and you hire a plumber to fix the plumbing in your company office; chances are this person is an independent contractor if this individual's work is otherwise not connected to your business and you provide no direction to this individual.

Employee: As part of your company you fix up houses and hire a plumber to inspect and repair the plumbing in your buildings; this individual is your employee if you direct the work that this individual performs, the hours of employment, the materials or tools he or she is to use, etc.

Statutory Employer: The plumber has two assistants who work with him on your buildings; the plumber has no workers' compensation insurance coverage for these assistants. Chances are, you will be considered the statutory employer of the two assistants for purposes of workers' compensation insurance coverage.

For more information about misclassification, exclusions, and employees vs. independent contractors in the Workers' Compensation insurance context, please read about:

Misclassifications

Exclusions

Employees vs. independent contractors

Report suspected misclassification

Miscoding

Miscoding means the improper categorization of employees under the National Council on Compensation Insurance (NCCI) worker classification codes. A class code is a four-digit code assigned by NCCI to help differentiate between the various job duties or "scope of work performed" by employees.

There are over 700 unique codes and these determine the pricing and cost of a workers' compensation insurance policy that a business will purchase through their insurance carrier for to cover their employee.

Miscoding Example

Employer: An employer reports to his insurance agent that he has two clerical workers and three employees performing general residential construction, when in fact he has one clerical worker and four roofers.

Report suspected miscoding by an employer, (Please see Fraud, Misclassification, and Miscoding complaint form).

Incorrect risk classification by insurance agents and/or underwriters often results in premiums that are higher or lower than they should be for a particular employer.

If you believe that your employees have been miscoded by your insurance agent, then contact the Department of Financial Regulation, Insurance Division Consumer Services Section at

1-800-964-1784 or e-mail consumercomplaints@vermont.gov

Fraud

Fraud means intentionally lying or making a false statement in order to obtain a workers' compensation benefit.

Sometimes fraud occurs when someone lies about a material fact in order to affect someone else's obligations or benefits.

Fraud may be committed by any party or interest to a workers' compensation policy or claim. This includes but is not limited to the following:

- Injured worker
- Employer
- Physician
- Adjuster
- Insurance agent
- Vocational counselor or
- Any other individual who has an opportunity to influence a workers' compensation insurance policy or claim

There are three elements to fraud:

1. Must be willful; **intentional** or **deliberate**; *and*
2. Involves a **misrepresentation** or **lie**; *and*
3. Made for the purpose of obtaining a **benefit**.

It is necessary for *all* three elements to be met in order for action to rise to the level of "fraud."

Fraud Examples

Employer: An employer or agent of an employer intentionally under-reports payroll or misclassifies employee's job descriptions in order to minimize the workers' compensation insurance premium.

Employee: An injured worker performs part-time work while receiving Temporary Total Disability (TTD) benefits. An employer, physician or attorney asks the employee if they are working and they deny it.

Adjuster: An insurance adjuster misinforms a company physician that an injured worker has a prior history of the current medical problem.

Physician: A doctor treats a patient for an injury. The patient has no health insurance coverage. The patient does not indicate work caused the injury but the doctor states in his note that work caused the injury in order to ensure bill payment.