

New Data Needed: Improving New Jersey's Enforcement of Employee Misclassification Laws

50 Rutgers L. Rec. 248 (2023) | [WestLaw](#) | [LexisNexis](#) | [PDF](#) **Introduction**

In the United States, thousands of employees in the private sector are misclassified as independent contractors.¹ Employers have used misclassification to withhold workers' benefits such as well-earned wages, benefits, and sick leave.² This has a deleterious effect on working conditions and a cumulative effect on income inequality.³ The rise of employee misclassification has both federal and state governments scrambling to enforce employee misclassification statutes with mixed results.⁴ Although some states use a broader definition of what constitutes an employee to enforce employee misclassification, the number of misclassifications demonstrates effective enforcement is still an ongoing issue.⁵ Because of this lack of effective enforcement, employee misclassification persists in the workforce.⁶

¹Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries, National Employment Law Project (October 2020), <https://s27147.pcdn.co/wp-content/uploads/Independent-Contractor-Misclassification-Imposes-Huge-Costs-Indep2> Kerri Keohane and David Schap, Employee Misclassification and Related Damages Claims, 27 J. LEGAL ECON. 63, 64 (July 2021).³ See Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries NATIONAL EMPLOYMENT LAW PROJECT, <https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-workers-federal-state-treasuries-update-october-2020/>; See [Eric Posner, How Antitrust Failed Workers, BOSTON REVIEW \(Nov. 23, 2021\)](#) <https://bostonreview.net/articles/competition-is-not-the-cure/>.⁴ Rebecca Rainey and Ian Kullgren U.S. Labor Agencies Strike Deal to Share Enforcement Information, BLOOMBERG LAW (Jan. 6, 2022), <https://news.bloomberglaw.com/daily-labor-report/u-s-labor-agencies-strike-deal-to-share-enforcement-information>; [Sean Golonka, State task force sets sights on multimillion-dollar problem of employee misclassification, The Nevada Independent \(Apr. 12, 2021\)](#), <https://thenevadaindependent.com/article/state-task-force-sets-sights-on-multimillion-dollar-problem-of-employ>; Francoise Carre, (In)dependant Contractor Misclassification, ECONOMIC POLICY INSTITUTE (June 8, 2015), <https://www.epi.org/publication/independent-contractor-misclassification/>.

⁵ See Carre, *supra* at note 1.⁶ See Louise Esola, N.J. calls for wider employee misclassification enforcement, BUSINESS INSURANCE, (July 11, 2019), <https://www.businessinsurance.com/article/20190711/NEWS08/912329545/NJ-calls-for-wider-employee-misclassification-enforcement>.

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