

# Workers' Compensation Coverage: Properly classifying your workers

Misclassifying your employees on a workers' compensation policy can have huge repercussions for your business. Not only could it result in over- or under-paying premiums, which could affect your cash flow, but it could also lead to fines and worse. Here are some tips to help avoid misclassification mishaps.



## Independent contractor or statutory employee?

Independent contractors can be deemed "statutory employees" for workers' comp purposes if they perform their work for you under a verbal or written contract and the work is within your business's typical scope of work. The determining issue is around who "controls" the day-to-day operations of the worker. If you set the person's work hours, and/or approve their time off, and/or supply them with work tools, the worker may be found to be a statutory employee you'd need to cover under your workers' comp policy.

A "true" independent contractor should perform their work following their own methods with their own tools, without being subject to the employer's day-by-day control. Of course, an employer can review the contractor's work and provide feedback, but the employer cannot control how the independent contractor achieves the work product. The regulatory intent here is to prevent employers from avoiding workers' comp liability simply by hiring independent contractors to perform work their employees would normally perform.

IRS classifications for an independent contractor, for purposes of taxation and overtime eligibility, may be different from the same contractor's classification for workers' comp, so you'll need to be careful here to avoid confusion regarding coverage. Visit your state's [workers' comp board website](#) for further information about classification.

## Classifying your business risk

As part of setting your workers' comp premium, your insurance carrier will ask you to classify your employees based on the risk of injury within your industry. A [class code](#) (three- or four-digit code that differentiates the type of job duties the worker performs) is used to help assign the rate for your premium. Industries such as those working with hazardous materials, in relatively dangerous environments (e.g., on roofs), or with heavy equipment, will generally have higher rates than businesses with less risk, such as clothing retail.

Remember, you should look beyond an employee's job title. Employees could still have the same classification code if they fill in for other roles, ultimately sharing the same risks. For instance, a restaurant's bartenders and waitstaff may have the same code. There are exceptions, of course. If you operate a warehouse, clerical workers who do only administrative work could receive a less costly (lower potential risk) code than forklift operators who perform potentially riskier tasks.

# 4 steps to protect yourself from worker misclassification



## 1 Use the relevant codes for classification

Some states use special classifications that may differ from the standard [NCCI codes](#). If you're unsure whether you're using the correct codes, check with your state's department of insurance or consult with a licensed agent.

## 2 Reclassify when appropriate

When employees move to a new position or their job duties change, be sure to revisit their classification. For example, if your office admin becomes a welder, you'll need to change their classification and likely pay a higher premium reflecting the additional risk exposure.

## 3 Always request certificates of insurance from any independent contractor

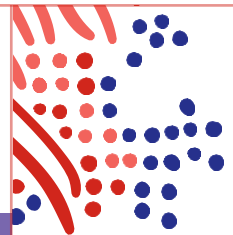
This enables you to determine whether the independent contractor has proof of workers' comp insurance. If they don't have coverage, you may be on the hook for any injuries that occur. Be sure to verify the policy coverage dates even if you have a certificate from the contractor.

## 4 Provide all the necessary documentation for workers' comp audits

Audits ensure that you're paying the right premium for your workers' comp coverage. So be prepared to document, revise, and explain your employee classifications in advance of each audit. That way, you avoid surprises of payment/premium adjustments that might be made retroactively as a result of an audit.

For more information about properly classifying your employees, connect with a licensed agent with Automatic Data Processing Insurance Agency, Inc. (ADPIA®) today!

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