

Employee or Independent Contractor?

Employee

- usually paid by the hour, but could be a salaried *employee* if a supervisor or manager
- works under the supervision and control of the employer

Independent Contractor

- usually, but not always, works and gets paid “by the job” and not by the hour. Hours worked are not set by the employer.
- performs the work they are hired to do, free from the control and direction of the employer
- performs work outside the usual course of work of the employer
- routinely works independently in an established trade or business of the type they are hired to do for the employer

Employee or Independent Contractor Worksheet

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | I am paid by the hour. |
| <input type="checkbox"/> | <input type="checkbox"/> | I am paid by the job. |
| <input type="checkbox"/> | <input type="checkbox"/> | I work under the supervision of a boss. |
| <input type="checkbox"/> | <input type="checkbox"/> | My boss controls what I do. |
| <input type="checkbox"/> | <input type="checkbox"/> | My boss controls how I do it. |
| <input type="checkbox"/> | <input type="checkbox"/> | I have my own trade or business that I am hired to do. |
| <input type="checkbox"/> | <input type="checkbox"/> | The work I am hired to do is different than what the boss's business is. |

Who's The Boss?

This worksheet will help you determine whether you are an employee or an independent contractor. Check off your response to each question below.

YES **NO**

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | I am paid by the hour. |
| <input type="checkbox"/> | <input type="checkbox"/> | I am paid by the job. |
| <input type="checkbox"/> | <input type="checkbox"/> | I work under the supervision of a boss. |
| <input type="checkbox"/> | <input type="checkbox"/> | My boss controls what I do. |
| <input type="checkbox"/> | <input type="checkbox"/> | My boss controls the hours I work. |
| <input type="checkbox"/> | <input type="checkbox"/> | My boss controls how I do my job. |
| <input type="checkbox"/> | <input type="checkbox"/> | I have my own trade or business that I am hired to do. |
| <input type="checkbox"/> | <input type="checkbox"/> | The work I am hired to do is different from what the boss's business is. |
| <input type="checkbox"/> | <input type="checkbox"/> | I bring my own tools to the job. |
| <input type="checkbox"/> | <input type="checkbox"/> | The boss provides the tools for the job. |

Special Problems for Temp Agency Workers (Facilitator's reference)

Employer: Who's my employer – the temp agency or the place they send me to work?

There is not one answer to this question. But there are some guidelines:

- The temp agency is always responsible for wage and hour issues. Sometimes, the “client” or “user” employer is also responsible for violations of wage and hour law.
- The temp agency and the “user” employer are both responsible for health and safety issues. The temp agency is responsible for providing you with worker's compensation insurance.
- The temp agency and the “user” employer can both be held liable for violations of anti-discrimination law and violations of your right to join a union or band together to complain about a workplace problem.
- The temp agency is responsible for issues relating to unemployment benefits.

Getting to Work: Am I required to pay for transportation to the location the temp agency sends me?

- If you are *required* to use the temp agency's transportation you cannot be charged for transportation.
- If you make only \$6.75/hr the temp agency cannot charge you to use its transportation.
- If you make more than \$6.75/hr and *choose* to use the temp agency's transportation it can charge you no more than 3% of your daily wages and the amount charged cannot cause you to make less than the minimum wage (\$6.75/hr).

Waiting for Work: Am I entitled to be paid while waiting to work?

- Reporting to work at a set time requires payment of three-hours' work at minimum wage even if you are sent home and no work is required
- But, going to a temp agency to find out if you will be assigned a job does not trigger this requirement.
- However, if you are required to take the temp agency's transportation to the job, it is likely that you should be paid for that travel time.
- The time you spend putting on and taking off required safety equipment should be paid time

Getting paid: When should I be paid and how much?

- You should be paid promptly and fully.
- Wages must be paid weekly and within six days of the end of the pay period.
- If you voluntarily quit your job, you must be paid on the next day. I
- If you are fired you must be paid on the last day you work.
- If you work more than 40 hours in a week you are entitled to overtime pay – time and a half for any hours over 40.

Unemployment Insurance: How do I know when I am unemployed and can collect unemployment?

- You are unemployed when the temp agency tells you they have no work assignment for you.
- The temp agency must tell you *in writing* that you must report to the temp agency after finishing a job to see if other work is available.
- If the agency does not have work for you, then you may apply for unemployment benefits if you have earned enough money to qualify for benefits

Health and Safety Equipment: Who is responsible for providing safety equipment – the Temp Agency or the User Employer?

- Because the temp agency and the workplace employer both have control over your employment both have obligations to provide a safe workplace. This includes training, providing information about hazardous equipment and/or chemicals and providing personal protection equipment (gloves, eye or hearing protection, for example).
- It is not always clear who is responsible for providing safety equipment and information about the safety of the workplace. Often, *you must ask* in order to know who is responsible for providing you with safety equipment.
- Firing a worker for complaining about workplace safety or health or for demanding necessary safety equipment is illegal.
- The temp agency is required to pay workers compensation for medical care needed for workplace injury and compensation for time lost due to a workplace injury.

Special Problem For Day Laborers Hired On The Street Corner (Facilitator's reference)

Street Corner Hiring: Do I have a right to stand on the street to look for work?

Workers have a First Amendment/Free Speech right to solicit work on the streets. However, a city or town may create restrictions about how many people can gather to wait for work or tell you where it is lawful to solicit for work. This area of the law is unclear. Day labor organizations and legal rights workers helping day laborers are fighting for day laborer's right to seek employment on the streets of their communities.

Wage Theft: When and how much should I be paid?

All workers have the right to be paid fully and promptly. You should be paid for all hours worked at the agreed upon rate.

Your Rights on the Job in Massachusetts

Wages and Hours

Minimum Wage

- Private sector employees must be paid at least \$7.50 per hour (\$8.00 as of 1/1/2008).
- Federal employees must be paid at least \$5.85 per hour
- Tipped employees must be paid at least \$2.63 per hour

Overtime

- Covered employees must be paid one and a half times their regular rate for all hours worked over 40 in a workweek.

Payment of Wages

- Wages must be paid in full and promptly

Breaks

- Employees who work a period of more than six hours are entitled to a 30-minute meal break
- Employees are entitled to bathroom facilities and breaks.

Discrimination

- An employer may not discriminate against a job applicant or employee in hiring, promotion, discharge, pay, fringe benefits, training, or other aspects of employment on the basis of race, ancestry, color, sex, religious creed, national origin, age 40 or over, handicap, or sexual orientation
- An employer must make a reasonable accommodation to an individual with a physical or mental disability if this will enable the individual to perform the essential functions of a job
- An employee is protected from sexual harassment

Leave

- An eligible employee may be absent for up to 12 weeks a year without losing their job:
 - Due to a disability caused by a serious health condition
 - To care for a family member who is disabled because of a serious health condition
 - To care for or bond with a newborn, adopted or foster child
- Employees eligible for FMLA (Family and Medical Leave Act) leave may take 24 hours unpaid time off each year to:
 - Participate in school activities related to a child's education
 - Accompany a child to a routine medical or dental appointment
 - Accompany an elderly relative to a routine medical or dental appointment or to an appointment for professional services

Health and Safety Protection

- Workers are entitled to a workplace free from recognized physical or health hazards.

Wage Replacement

- If injured on the job, a worker is entitled to receive Workers Compensation.
 - Weekly benefits are set at 60% of the average weekly gross wages.
 - Work-related medical expenses are paid for life.

Organizing

- Employees have a right to engage in concerted activity to improve their wages and working conditions, including the right to petition, leaflet, organize a union, picket, and strike
- An employer must recognize a union chosen by a majority of employees in an appropriate bargaining unit
- An employer must bargain in good faith with a union about all matters relating to employment

Layoff

- Guarantees up to 30 weeks of unemployment insurance for workers who have lost a job through no fault of their own