

The background is a collage of images related to Doordash delivery. It includes a woman in a Doordash uniform holding a bag, a car with a Doordash sign on the roof, a man in a Doordash uniform, and a woman carrying a Doordash bag. The text is overlaid on this collage.

# Testimony before the Oregon House of Representatives Rules Committee

March 4, 2019

# Agenda

- What is “misclassification” and who does it affect?
- What are the consequences of being misclassified for workers?
- What are the costs of misclassification to the government and the economy?
- How are legislatures, agencies, and the courts responding?



# What is misclassification?

Misclassification can take several forms:

- Employers call employees “**independent contractors,**” even when the workers are not running their own businesses;
- Employers require employees to form a **limited liability corporation or franchise company-of-one** as a condition of getting a job;
- Employers pay workers **off the books,** without any payroll treatment at all.

# Why does misclassification matter to workers?

Employee	Independent Contractor
Minimum wage and overtime	None
Workers' compensation	None, or worker pays
Unemployment insurance	None
Anti-harassment <sup>10</sup> and discrimination	None
Right to form a union and collectively bargain <sup>11</sup>	None
Employer-provided retirement benefits	None

**Table 2. Costs to Worker**

Employee	Independent Contractor
Employer and worker each pay 7.65% of payroll for FICA and FUTA. Employer generally makes payroll deductions. <sup>12</sup>	Worker pays entire 15.3% self-employment rate. <sup>13</sup> Worker also usually responsible for quarterly tax filings.
Employer pays workers' compensation taxes.	Worker responsible for insurance (or costs arising from workplace injuries).
Employer usually cannot deduct from pay any required work expenses such as uniforms, materials, etc.	Worker responsible for operating costs such as gas, tools, etc.

# Who does misclassification affect?



# Costs to the government: National

- A 2009 report by the U.S. Government Accountability Office estimated independent contractor misclassification **cost federal revenues \$2.72 billion** in 2006.
- A 2000 study commissioned by the U.S. Department of Labor found that between **10% and 30%** of audited employers misclassified workers.
- Researchers found that misclassifying just 1% of workers as independent contractors annually results in a **\$198 million** hit to unemployment insurance (UI) trust funds.

Source: NLP Fact Sheet "Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries,"

<https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-on-workers-and-federal-and-state-treasuries-update-2017/>



# Costs to the government: Oregon

## 2016 Report to Legislature:

- 3,657 misclassified workers identified;
- **\$696,464** assessed in lost UI payroll taxes;
- **\$33,800,817** in unreported wages.

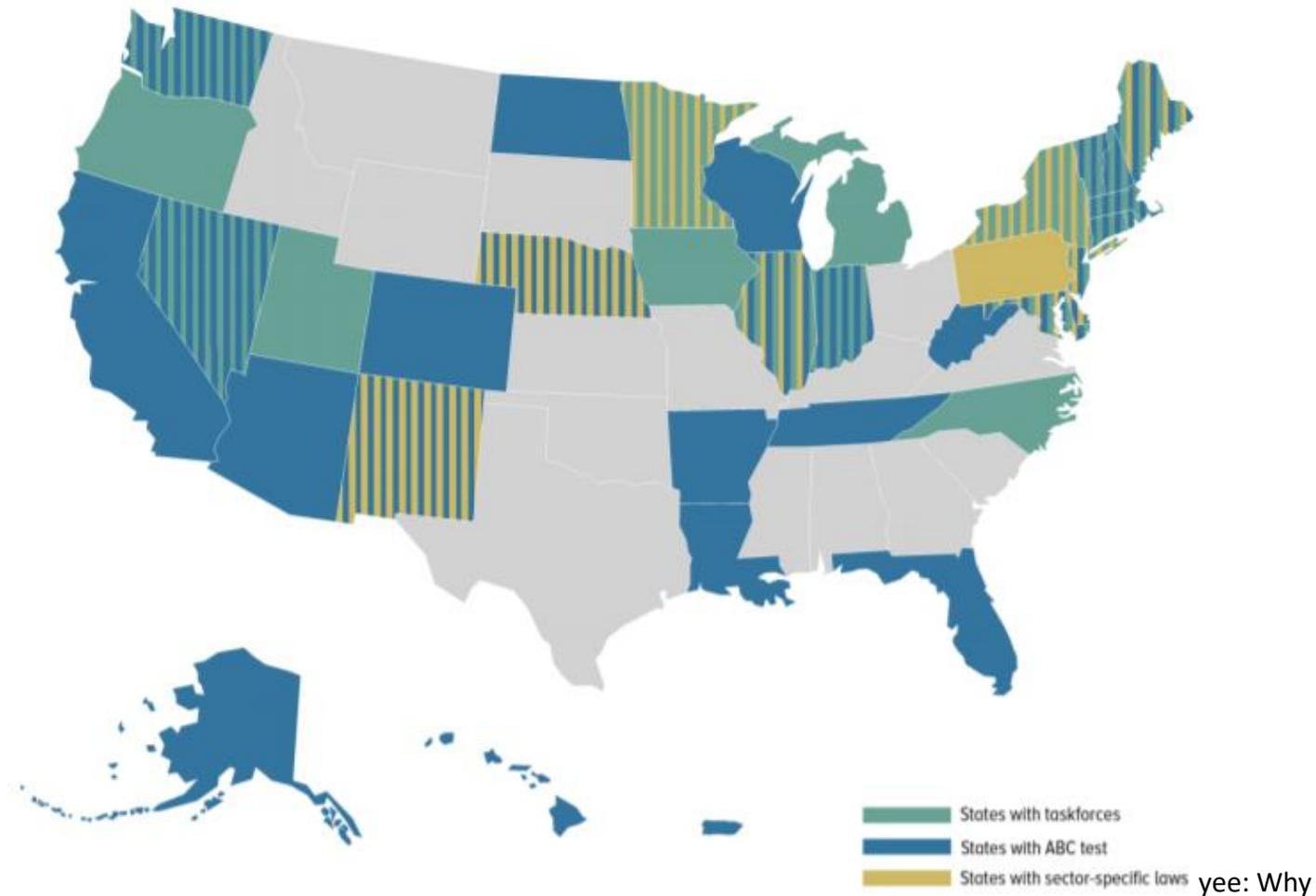
Source: Interagency Compliance Network Report to the Oregon Legislature, April 2017,  
[https://www.oregonlegislature.gov/citizen\\_engagement/Reports/2017%20ICN%20Legislative%20Report\\_2017\\_04%20FINAL.pdf](https://www.oregonlegislature.gov/citizen_engagement/Reports/2017%20ICN%20Legislative%20Report_2017_04%20FINAL.pdf).

# Passing on costs to other businesses

“This kind of work...is in direct competition with my HVAC company... I can assure you, you can’t ...pay workers’ comp, pay Medicare match, pay Social Security match, and health insurance match, and do all the things that I do with what you’re doing.”

-- North Carolina State Senator

# What are legislatures, agencies and courts doing?



<https://www.nelp.org/publication/independent-contractor-vs-employee/>.



# Some solutions: Statutory Employment

Statutory employment: including independent contractors in labor standards.

San Francisco wage law, NY TNC minimum wage

Seattle Domestic Worker ordinance

Paid Family Leave laws

Discrimination (WA, NYC)



# ABC test for employment status

Worker is an independent contractor only if

- ▶ Free from control
- ▶ Work is outside the usual course of business
- ▶ Customarily in an independent business

26 states UI laws

Wage laws (CA, NJ, MA, VT)

Sectoral application (DE, IL, ME, MD, MN, NE, NM, NY, PA).



Thank You



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