

Employee Classification Act

Annual Report | July 2022 – June 2023

NEBRASKA

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DEPARTMENT OF LABOR

Equal Opportunity Employer/TDD: 800.833.7352

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Background and Purpose

NDOL efforts enforce labor standards and deter labor violations that result in the misclassification of employees as independent contractors. Proper classification entitles employees to the protections of wage and hour laws, employment discrimination laws, and unemployment and workers' compensation insurance.

Misclassification Investigations

A misclassification investigation is initiated when workers, businesses, or government agencies provide tips, referrals, or leads through the online application on the website, the hotline, and as a result of general telephone or walk-in inquiries regarding the law. The agency also conducts employer and worker interviews during random worksite visits. Educational information on the Employee Classification Act (ECA) and the penalty for violation to employers and workers is provided during worksite visits.

The employer ultimately receives a determination letter in the mail advising them if workers have been misclassified and if any related penalties are assessed.

Additionally, NDOL makes referrals and collaborates with the Nebraska Department of Revenue (NDOR) and Workers Compensation Court (WCC) to ensure the collection of required taxes, interest and penalties, and affords employees the protections of law under the ECA. Other enforcement actions may be taken to protect Nebraska workers and help businesses properly classify workers.

Contractor Registration Unit Activities

Website/Hotline

NDOL maintains a web page that provides narrative of the law, links to required postings (English and Spanish versions), and the ECA Report Form, allowing for the confidential reporting of suspected violations of employee classification. The web page features links to sources of information regarding worker misclassification, including contractor registration, the WCC, NDOR, and the IRS (SS-8 Determination of Status Form).

The web page is located at dol.nebraska.gov/LaborStandards/WorkerRights/EmployeeClassificationAct.

Employee Classification/Contractor Registration Unit

Cases and Investigations

Initiated By	Cases	Citations Issued	# of Misclassified Workers	Cases w/ Fines Collected	Fines Collected	Cases Payment Pending	Fine Payment Pending	Cases w/ Unpaid Citations	Fine Amount Unpaid
CRA Investigation	2	0	0	0	\$0.00	0	\$0.00	0	\$0.00
Construction Site Visits	90	69	225	44	\$98,300.00	2	\$9,200.00	23	\$109,500.00
Hotline	8	2	13	2	\$6,500.00	0	\$0.00	0	\$0.00
Wage Claim	17	15	47	7	\$4,800.00	4	\$8,200.00	8	\$19,500.00
E-Mail	3	1	3	1	\$1,500.00	0	\$0.00	0	\$0.00
Website	8	1	39	1	\$6,000.00	1	\$13,500.00	0	\$0.00

For the reporting period of July 1, 2022, through June 30, 2023, the Employee Classification/Contractor Registration units opened 128 misclassification investigations. Investigations were initiated by wage claims filed with the Department, construction site visits, NDOL's website, and the hotline. Eighty-eight of 128 cases resulted in a determination of worker misclassification with a total of 327 violations. Cases worked during the reporting period yielded a collection of \$117,100 in fines for violations. A total of \$30,900 in fines are pending payment, while \$129,000 have not been paid. Eighty-eight employers with violations were shared with the Department of Revenue, Worker's Compensation Court, and the NDOL Unemployment Insurance division for additional analysis and investigation. NDOL collected \$26,388.61 in combined tax and \$495.09 in interest and penalties during the reporting period. Additional collections are pending.

Outcome of NDOL Referrals

LB 563 from the 2010 session of the Nebraska Legislature provides that the Commissioner of Labor shall share any violations of the Employee Classification Act with the Nebraska Workers' Compensation Court. The Compensation Court shall then refer any such violation reasonably believed to be a violation of the Nebraska Workers' Compensation Act to the appropriate prosecuting authority for appropriate action. (See LB 563, Sec. 8, which is codified at Neb. Rev. Stat. §48-2908.)

The Department of Labor shall also provide an annual report to the Legislature regarding compliance with and enforcement of the Act, to include the number of referrals to the Compensation Court, and the appropriate prosecuting authority, and the outcome of such referrals. (See LB 563, Sec. 9, which is codified at Neb. Rev. Stat. §48-2909.)

Workers' Compensation Court

NDOL referred two additional cases to the Nebraska Workers' Compensation Court (WCC) for a total of 90 cases in fiscal year 2022-23.

Of the 90 cases:

- Thirty-eight employers were found to have had workers' compensation coverage at the time that they were cited by NDOL. These employers were found to be in compliance with the coverage requirements of the Nebraska Workers' Compensation Act.
- Two employers were referred to the Nebraska Attorney General's Office. Thus far, one of those employers has been brought into compliance and paid a fine.
- The remaining 50 employers are under investigation at this time.

Nebraska Department of Revenue

For the reporting period of July 1, 2022 – June 30, 2023, NDOL received no updates regarding the 88 referrals to NDOR.