

# THE EMPLOYER – EMPLOYEE RELATIONSHIP

# Laws

**Revised Statutes of Missouri (RSMo)**

**Code of State Regulations (CSR)**

**United States Code (U.S.C.)**

# Purpose of UI



**Unemployment Insurance**  
provides short-term  
income for individuals  
who become unemployed  
due to no fault of their  
own

Section 288.020, RSMo

# Funding

- Each quarter, **employers** are required to report **wages** paid to **employees** to the Missouri Division of Employment Security (DES) and pay **contributions** (tax) due on the wages to the DES

8 CSR 10-4.030

- **Contributions** are not withheld from **employees' wages**

Section 288.380, RSMo

# Contributions → Benefits



**Contributions** are used by the DES to pay unemployment compensation (**benefits**) to eligible **employees** who become unemployed due to no fault of their own

Sections 288.040 & .060, RSMo

# UI Helps Individuals & Businesses



Unemployment payments to out-of-work individuals provide money the individuals generally use for necessities – helping put money back into local economies

# Definitions and Examples

**Employer**

**Employment**

**Wages**

# Definitions

- **Employer:** Meets the criteria of paying **wages** to individuals for **services** performed  
Section 288.032, RSMo
- **Employment:** Services performed in exchange for **remuneration**  
Section 288.034, RSMo
- **Wages:** Remuneration (*payment / compensation*) for personal **services**  
Section 288.036, RSMo



# Employers

<b>General businesses</b>	retail and service industries
<b>Domestic</b>	in-home health care, nanny
<b>Agricultural</b>	farm, ranch, greenhouse
<b>Government</b>	public school, water district
<b>Non-profit</b>	charitable organizations
<b>Year-round</b>	hospital, fire department
<b>Seasonal</b>	holiday store, water park

# Employment

Classified as:

<b>General</b>	in a business
<b>Domestic</b>	in a home
<b>Agricultural</b>	on a farm

Includes:

professional ■ unskilled ■  
full-time ■ part-time ■ temporary ■ casual

# Wages

Includes both **monetary** and **in-kind** compensation

Paychecks / deposits   ■   Cash  
Commissions   ■   Bonuses   ■   Tips  
Value of living quarters

# There are Exceptions in the Law

## *Some Examples:*

### *Definition*

□ **Employer**

□ **Employment**

□ **Wages**

### *Does not include:*

□ Owner of a beauty salon is not the employer of beauticians who pay the owner rent for use of the facility

□ **Independent contractors**

□ Value of meals furnished for the employer's convenience and on the employer's premises

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# Independent Contractors

# What is the relationship?

- **Wages** paid by an **employer** to an **employee** are reportable and taxable. There must be an **Employer-Employee** relationship. **W-2**
- Not all individuals who provide services are employees. If an individual is not an employee, the remuneration paid to the individual is not wages and is not reportable. **1099**

# Independent Contractors

In Missouri, to determine if an individual is an employee (*reportable*) or independent contractor (*not reportable*), use the **20 Factors** identified by the Internal Revenue Service as a guide to determine if the employer retains the **right to control** the manner and means of the individual's service – **how** results are accomplished, rather than just the result.

Section 288.034.5 RSMo

8 CSR 10-4.150

26 U.S.C., Section 3306(i)

# 20 Factors

- 1) Instructions
- 2) Training
- 3) Integration
- 4) Services rendered personally
- 5) Hiring, supervising & paying assistants
- 6) Continuing relationship
- 7) Set hours of work



# 20 Factors

- 8) Full-time required
- 9) Doing work on employer's premises
- 10) Order or sequence set
- 11) Oral or written reports
- 12) Payment by hour, week, month
- 13) Payment of business and/or traveling expenses

# 20 Factors

- 14) Furnishing of tools & materials
- 15) Significant investment
- 16) Realization of profit or loss
- 17) Working for more than one firm at a time
- 18) Making service available to general public
- 19) Right to discharge
- 20) Right to quit

# Cannot waive rights



Any agreement by a worker to waive his or her rights to benefits or any other rights under an employment security law shall be void.

Section 288.380, RSMo

# Correct Classification

- When the DES receives information that services provided for an **employer** are performed by independent contractors, an investigation may be made to confirm the classification of the workers is correct.
- The DES attempts to get **20 Factor** information from both the employer and workers to determine if the employer retained the **right to control** the workers' service.

# Required Records

Employers are required to keep payroll and other related records open for inspection for three calendar years plus the current year.

Section 288.130, RSMo

Payroll records must be maintained for each worker that show:

- Name, Social Security Number, Gross Wages
- Place where work was done
- Dates worked and dates paid

8 CSR 10-4.020

# Determination of Worker Status

If workers who were considered to be independent contractors by the employer are determined by the DES to be **employees**, a determination is issued that the employer may appeal.

Sections 288.070 & .130, RSMo

# Who hears the appeal?

- The **Appeals Tribunal** provides a fair and impartial hearing to all parties affected by a determination. The decision-making process of the Appeals Tribunal is independent of the DES.

Section 288.190, RSMo.

**Supreme Court**

**Court of Appeals** ↑

**Labor & Industrial Relations Commission** ↑

- **Appeals Tribunal (present evidence)** ↑

# Impacts of Misclassification

- **Employers** that misclassify employees as independent contractors cut costs by not paying unemployment contributions, workers' compensation insurance, and Social Security withholdings. This could give them a competitive advantage over employers that report employees and pay taxes properly. It could also lead to penalties.



# Impacts of Misclassification

- **Employees** that are not reported are denied the protection of state laws, such as unemployment and workers' compensation in the event they lose their job due to no fault of their own or incur a workplace injury. They often do not have access to employee benefits such as health insurance and pension plans.

# Penalties

- **Fraud or evasion on the part of any employer –** penalty of 25% of the amount by which the state was defrauded

Section 288.160 , RSMo

- **Willful violation –** misdemeanor punishable by a fine of \$50 to \$1,000 and/or by imprisonment in the county jail for not more than 6 months
- **Fraud for receiving or denying benefits by intentional misrepresentation, misstatement, or failure to disclose –** 25% or 100% penalty of amount fraudulently obtained or denied

Section 288.380, RSMo

# How to provide a tip?

<http://labor.mo.gov/offthebooks>

[https://apps.labor.mo.gov/forms/misclassify/misclass\\_form.asp#](https://apps.labor.mo.gov/forms/misclassify/misclass_form.asp#)

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# Resources

# [www.labor.mo.gov](http://www.labor.mo.gov)

- **Online assessment** for employers or workers to complete that can indicate if workers are more likely independent contractors or employees, based on answers to 20 Factor questions.
- **Online report form** and **telephone hotline** to report worker misclassification

[www.labor.mo.gov](http://www.labor.mo.gov)

□ **Pamphlets:**

▣ *Are You Off the Books? 1099 Fraud –  
Worker Misclassification*

▣ *Classifying Employees for Unemployment  
Insurance Tax Purposes*

□ **Labor Laws & Links – Unemployment**

# Questions?



# Contact

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