

INFORMATION AND RESOURCES

Independent contractors

Under Colorado Law, an individual is presumed to be in covered employment unless and until it is shown that the individual is free from control and direction in the performance of services, both under contract and in fact, and that the individual is customarily engaged in an independent trade, occupation, profession or business related to the work performed. This means that the worker will be presumed to be in covered employment until the employer meets its burden to establish otherwise.

Filing a complaint

Any person may file a written complaint alleging that a business has **misclassified** an individual, who is performing work, as an independent contractor. We accept complaints and conduct investigations regarding alleged misclassification of employees as independent contractors.

If the employer is found to be in violation of the law, each Division imposes the appropriate consequence. An employer who willfully disregards the law may also be fined \$5,000 per misclassified employee for the first misclassification and up to \$25,000 per misclassified employee for a second or subsequent violation by the Unemployment Insurance Division.

Requesting an advisory opinion

The Unemployment Insurance Division can also provide a written advisory opinion concerning the classification of a worker.

Visit WorkRight.cdle.co for more information

EMPLOYEE OR INDEPENDENT CONTRACTOR?

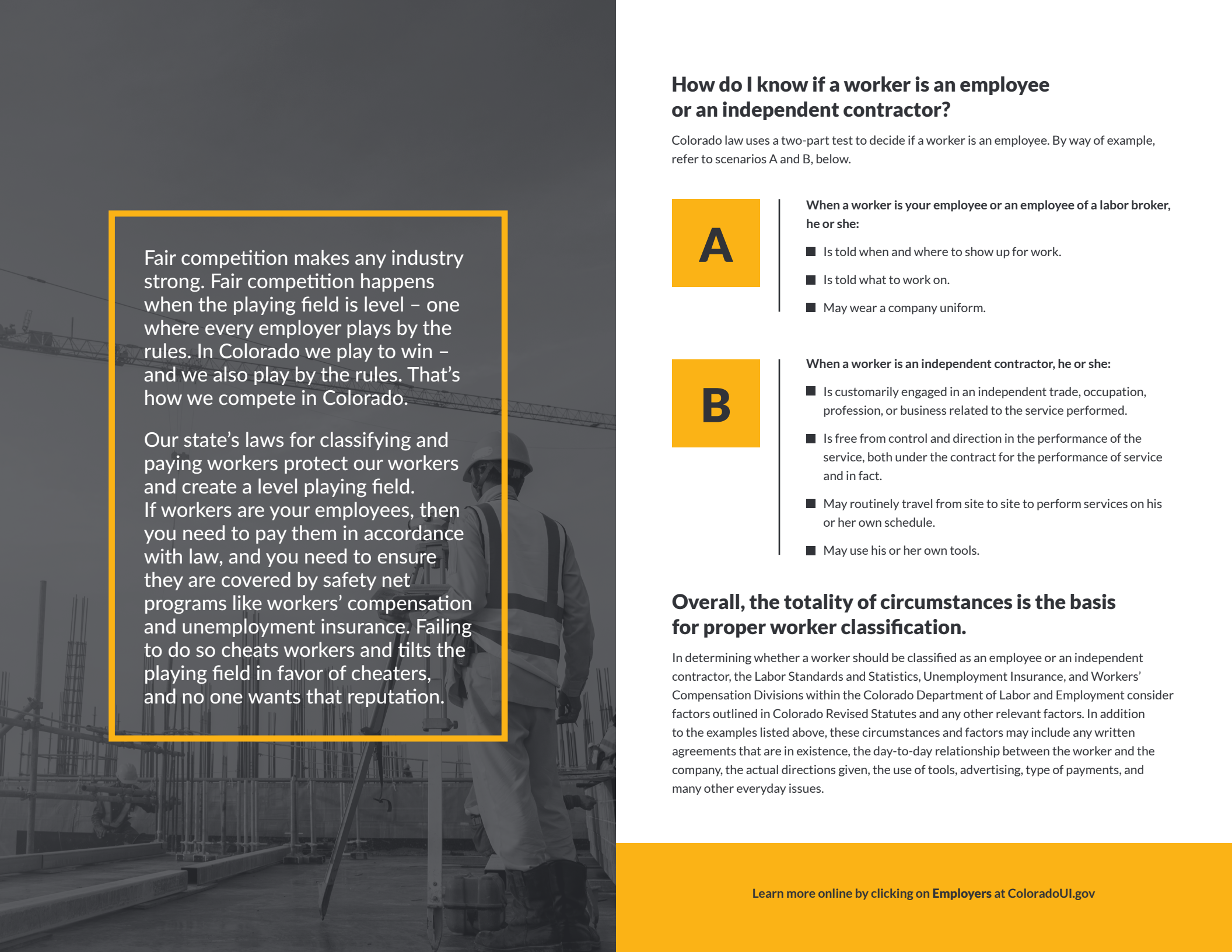
Your guide to proper worker classification



COLORADO
Department of
Labor and Employment



IT STARTS WITH YOU
Building a better Colorado



Fair competition makes any industry strong. Fair competition happens when the playing field is level – one where every employer plays by the rules. In Colorado we play to win – and we also play by the rules. That’s how we compete in Colorado.

Our state’s laws for classifying and paying workers protect our workers and create a level playing field. If workers are your employees, then you need to pay them in accordance with law, and you need to ensure they are covered by safety net programs like workers’ compensation and unemployment insurance. Failing to do so cheats workers and tilts the playing field in favor of cheaters, and no one wants that reputation.

How do I know if a worker is an employee or an independent contractor?

Colorado law uses a two-part test to decide if a worker is an employee. By way of example, refer to scenarios A and B, below.

A

When a worker is your employee or an employee of a labor broker, he or she:

- Is told when and where to show up for work.
- Is told what to work on.
- May wear a company uniform.

B

When a worker is an independent contractor, he or she:

- Is customarily engaged in an independent trade, occupation, profession, or business related to the service performed.
- Is free from control and direction in the performance of the service, both under the contract for the performance of service and in fact.
- May routinely travel from site to site to perform services on his or her own schedule.
- May use his or her own tools.

Overall, the totality of circumstances is the basis for proper worker classification.

In determining whether a worker should be classified as an employee or an independent contractor, the Labor Standards and Statistics, Unemployment Insurance, and Workers’ Compensation Divisions within the Colorado Department of Labor and Employment consider factors outlined in Colorado Revised Statutes and any other relevant factors. In addition to the examples listed above, these circumstances and factors may include any written agreements that are in existence, the day-to-day relationship between the worker and the company, the actual directions given, the use of tools, advertising, type of payments, and many other everyday issues.