

Reclaim Your Worker Rights



Stop paying extra taxes and find out how to get the benefits you deserve!

Your employer should treat you fairly. This means more than just getting paid. You also have a legal right to things like unemployment insurance and Social Security credits.

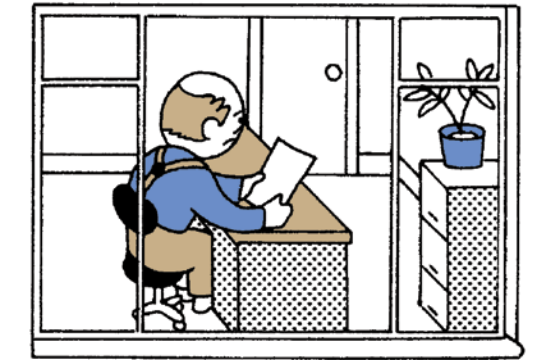
If your employer treats you like a contractor (or gives you a 1099 form), you might be missing out on important benefits and paying higher taxes than you're supposed to. Use this guide to find out how to fight it!

**MAKING
POLICY
PUBLIC**



What does it look like?

If you have a job, your employer should give you a form to file with your taxes. The form they give you can affect whether you get a refund or owe taxes. At the beginning of every year, they should give you either a 1099 or W-2.

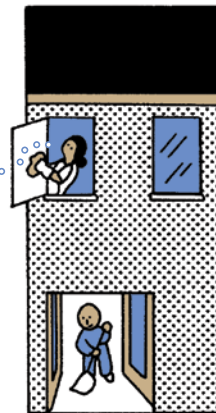
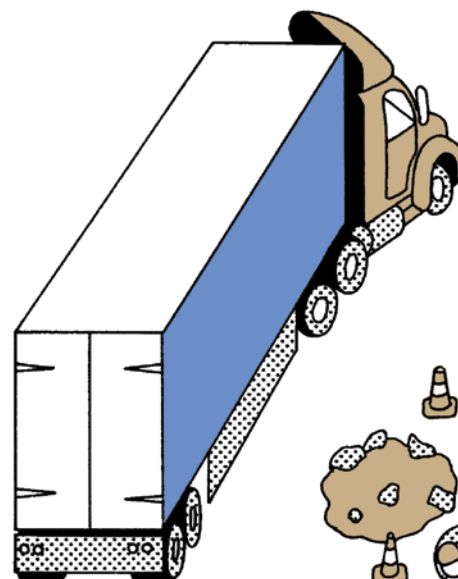
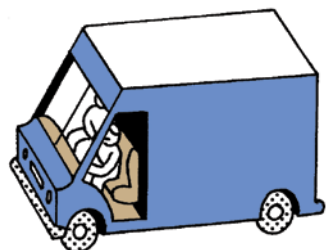


What is misclassification?

It's when your employer calls you an independent contractor even though you're actually an employee.

30% of businesses misclassify at least one worker and millions of workers are misclassified every year. Misclassification can happen in any job. It happens a lot in:

- Home care
- Trucking
- Construction
- Janitorial work
- Clerical work
- Staffing or temp agencies
- Nonprofits



Unfold this guide to find out how to tell if you're actually an employee!

1099s and W-2s

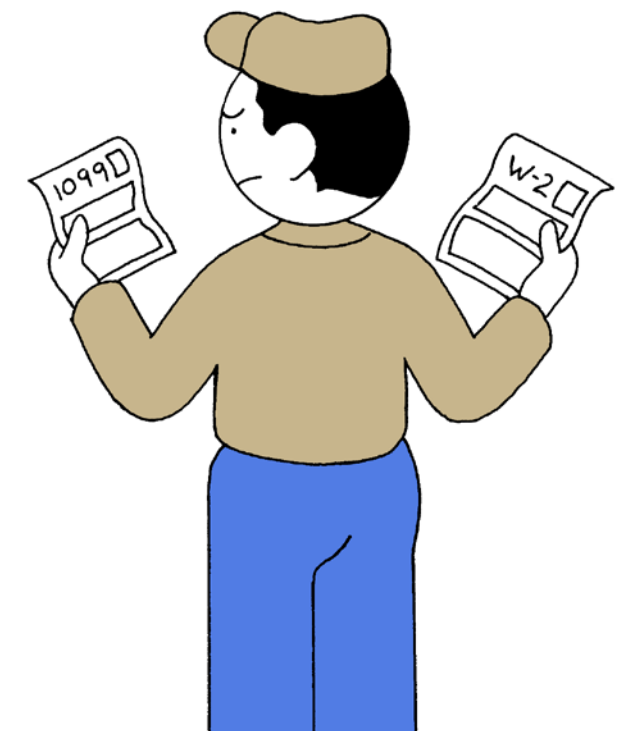
These are filled out by your employer and include information on how much you earned the year before and how much of it was kept for taxes. You'll get a W-2 if you're an employee. 1099s are the form for independent contractors. These show your earnings as "non-employee compensation." If you got a 1099 and you think you're an employee, you were probably misclassified!

Note: You might get both forms or no forms at all, especially if you're paid in cash. This could also be misclassification!

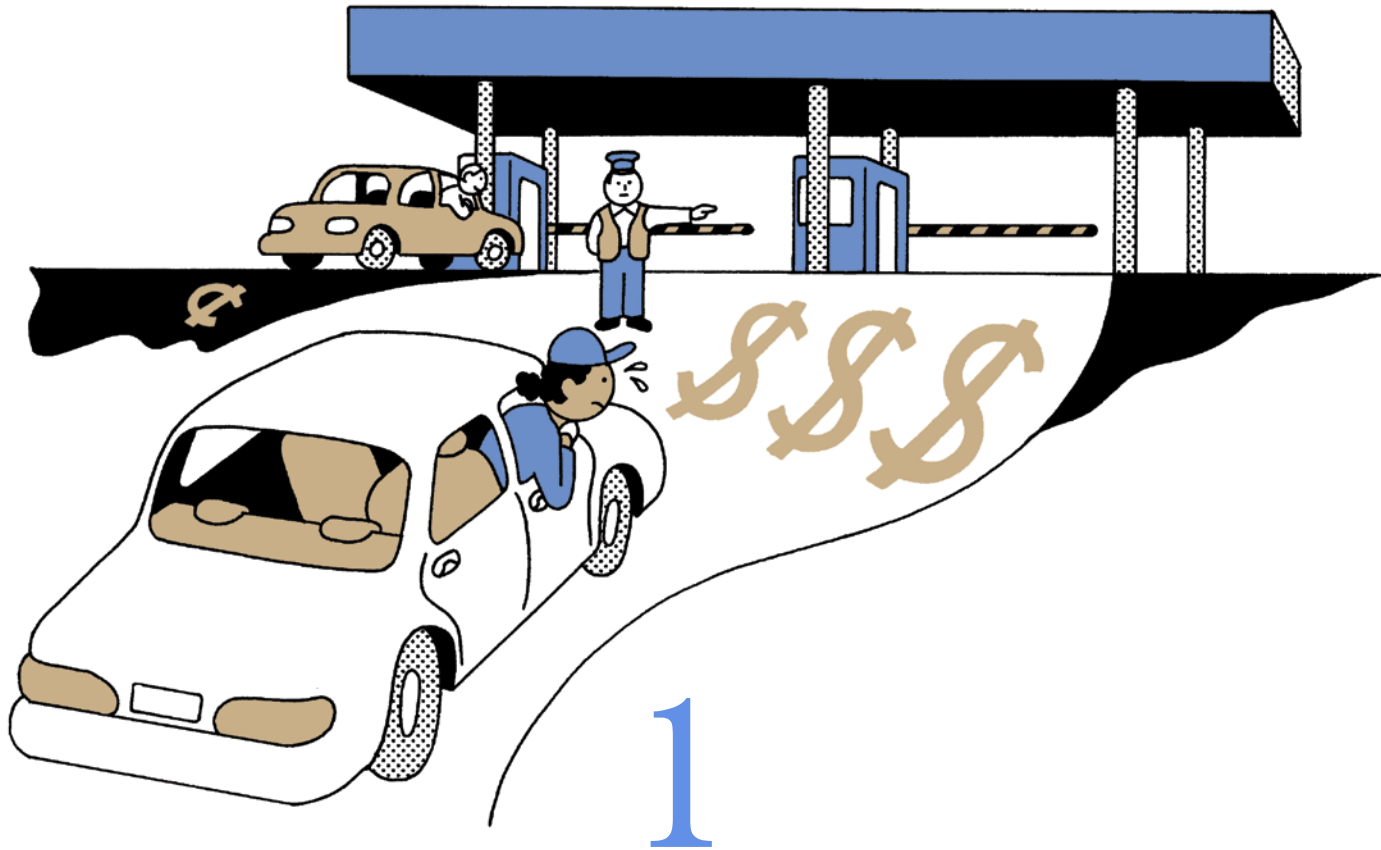
The differences between these forms are important!

Depending on which form you get, you may have to pay higher taxes. The taxes you pay are different depending on which form you get. Sometimes employers will give you a 1099 (or no form at all) instead of a W-2 as a way to save themselves money and not give you other important benefits.

If you think this is happening to you, reach out to a Low Income Taxpayer Clinic (LITC). Find one here: taxpayeradvocate.irs.gov/litc



How can misclassification hurt you?



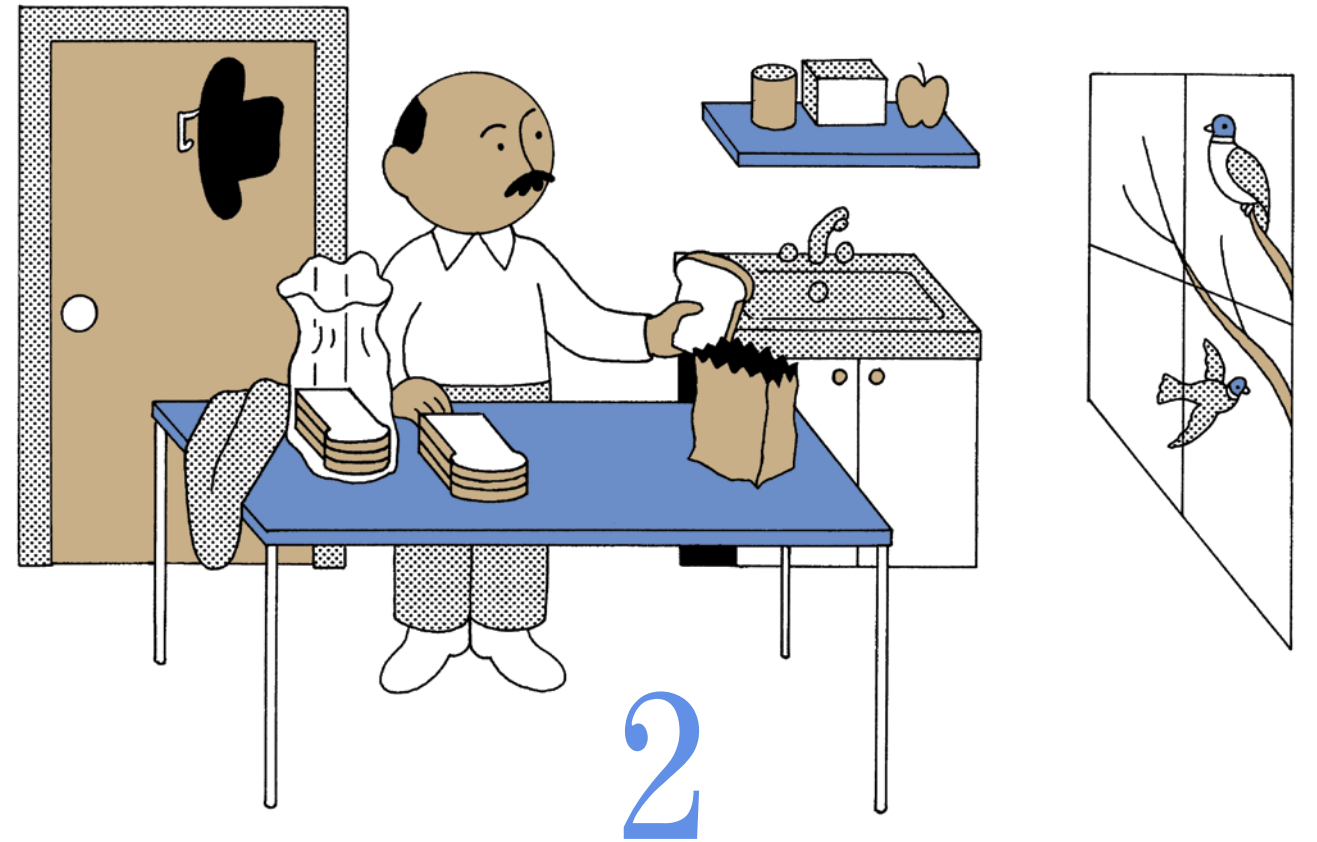
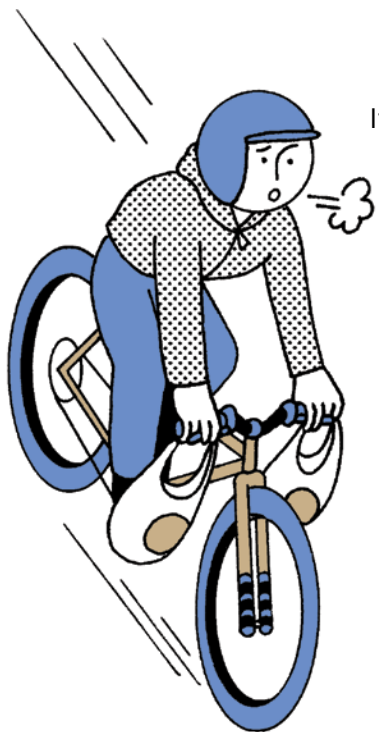
You have to pay higher taxes for Social Security and Medicare

Independent contractors (who receive 1099 forms) usually end up paying higher taxes because of the Self-Employment tax.

What does this mean?

If you're an employee, you only pay a 7.65% tax on your earnings, and your employer has to pay a matching 7.65% for you. If you're an independent contractor, you pay it all yourself.

This applies to you even if you don't have a Social Security number or any immigration status.



You have to budget for taxes yourself

If you're an employee, employers usually take out the taxes automatically from your paycheck. If you're an independent contractor, you have to put the money aside yourself to pay your taxes at the end of the year.

This can add up since you have to put away money for Social Security, Medicare, and federal income taxes, and sometimes also state and local income taxes. All together, these taxes could be up to a quarter or third of your income!

Social Security Benefits

The way you qualify for Social Security benefits is by building up Social Security credits.

The government gives you credits based on the amount of money you earn from working. This builds up over your lifetime.

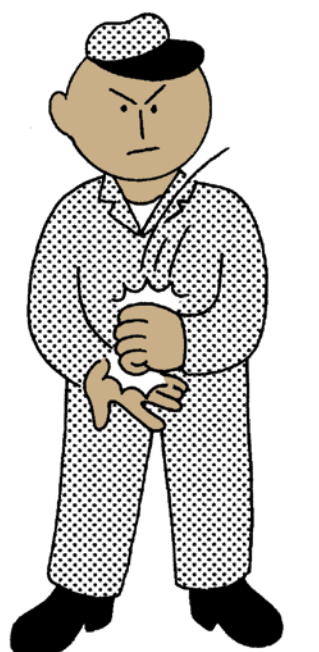
If you're an employee, you automatically get Social Security credits because your employer pays your Social Security tax directly to the government and reports your earnings for you on the W-2 form. If you're classified as an independent contractor, you don't get the credits unless you file a tax return and report all of the money that you were paid as an independent contractor (e.g., on a 1099 form or in cash).

You should file a tax return whether you can pay the tax or not. The IRS has installment plans and other options for those who can't afford to pay. This applies even if you're undocumented.

Employee Benefits

Employees have the right to certain benefits, including:

- Minimum wage
- Overtime compensation if you worked more than 40 hours a week
- Unemployment insurance if you lost your job
- Workers compensation for injuries on the job
- Medical insurance, sometimes
- Family and medical leave
- The right to organize, unionize, and collectively bargain for better wages and working conditions
- Automatic Social Security credits



If you were misclassified and think you've missed out on any of these benefits, see the back cover for details about who you can call and how to fight back.



You miss out on benefits

You have the right to certain benefits as an employee like Social Security, Medicare, and a lot of others. If your employer calls you an independent contractor, you miss out on these.

How do I know if I'm an employee or an independent contractor?

You're most likely an employee if:

- You have a boss or manager for most of the time you're working that job.
- Your boss or supervisor tells you how your work should be done, including how, when, and where you should work.
- Your boss gives you all the training, tools, or supplies to do your job or you get reimbursed by your employer if you pay for them.
- Your boss has the right to fire or demote you.
- All your work is done for one company or person.

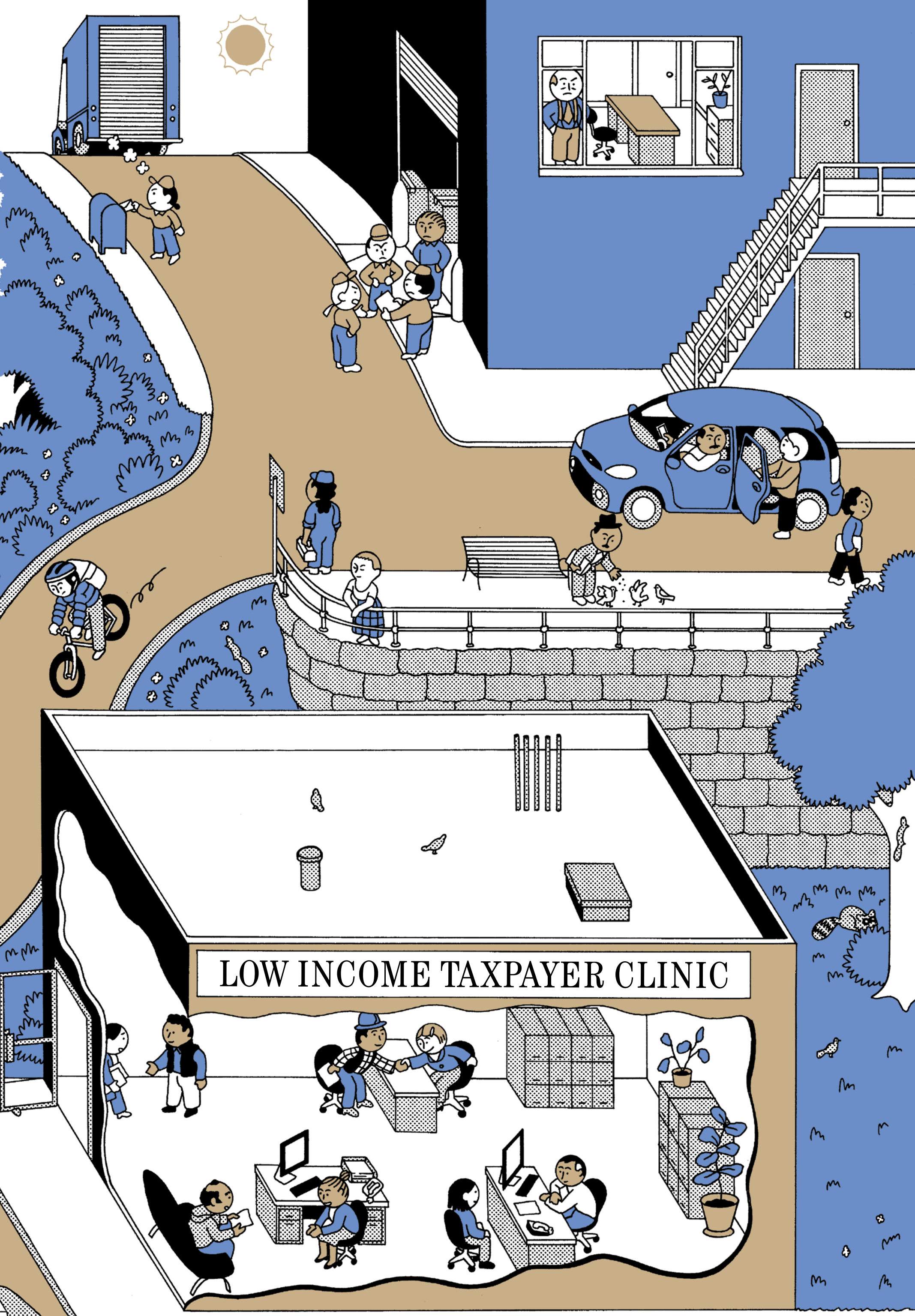
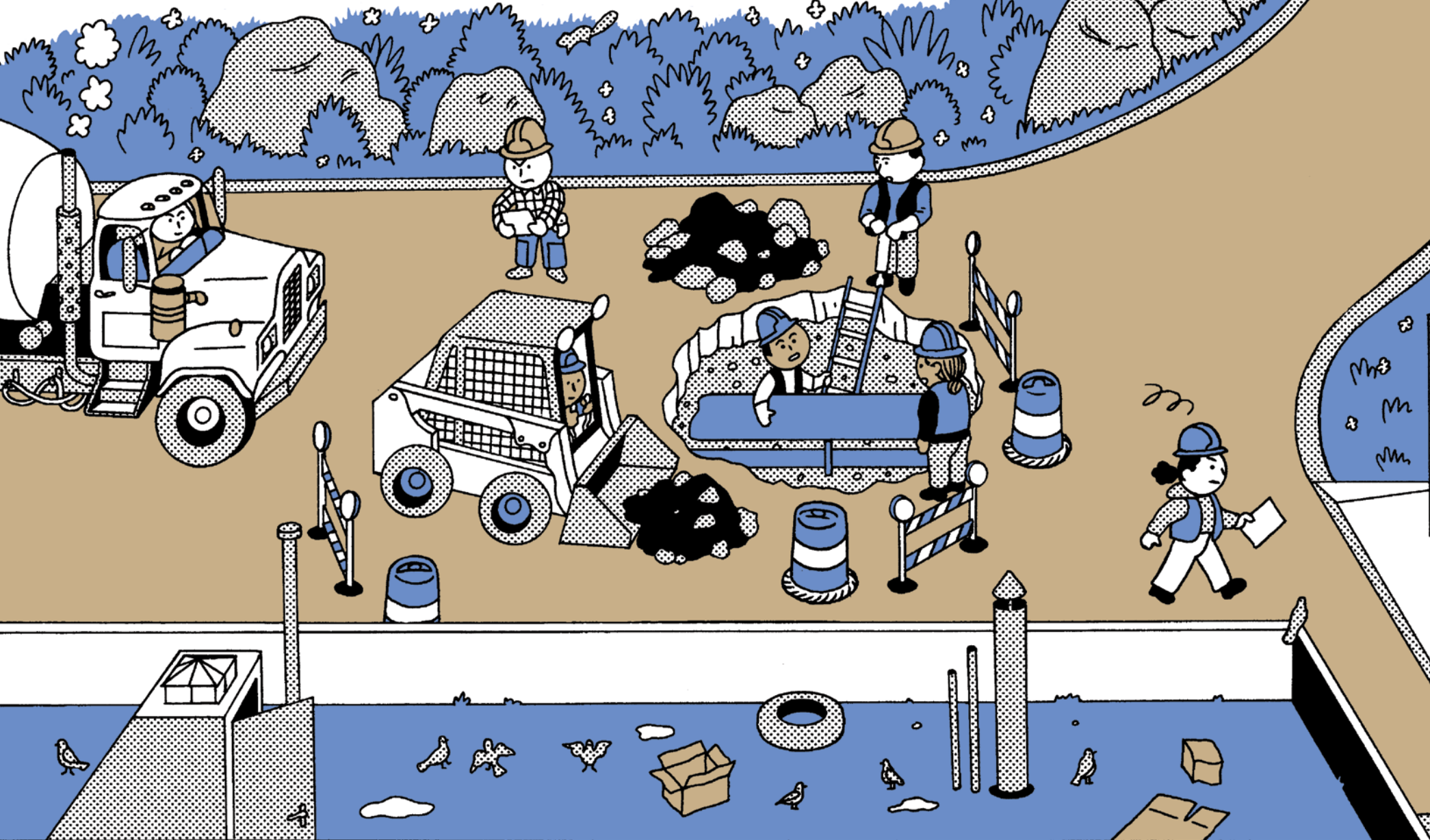
Your boss *doesn't* get to decide which one you are. It's based on the facts of your job and the law. Even signing an "Independent Contractor agreement," doesn't automatically make you an independent contractor!

If you're a gig worker or your work is controlled by an app, you might be an employee! See the back cover for people who can help you find out.

How can I fight misclassification?

The main way to do this is by filling out an SS-8 form and sending it to the Internal Revenue Service (IRS). They're the government agency in charge of federal taxes like Social Security and the Self-Employment tax. Find more information on how to file an SS-8 below!

Challenging your employer through a government agency may feel scary. But you don't have to do it alone. And the law is on your side. By doing this, you can prove to the government that you're an employee, not an independent contractor, and start paying your fair share of taxes.



The SS-8

The IRS can collect taxes owed for up to 10 years from when a tax return is filed. Filing an SS-8 can reduce your tax debt so you won't owe extra money!

The SS-8 is a form that asks you questions about your work, like why you think you're an employee and not an independent contractor.

You can find the SS-8 here: [irs.gov/formss8](https://www.irs.gov/formss8) For help filling it out, visit: [mys8.org](https://www.mys8.org)

After you complete the SS-8, fill out your tax return along with a Form 8919 to report only the Social Security and Medicare taxes you owe for that year.

SS-8 Tips

- Fill out the whole form. If the question does not apply to you, write "N/A" for that question. If you don't understand something on the form, contact your nearest LITC. Check the tree for more information!
- If you got both a W-2 and a 1099, you don't need to file an SS-8, just an 8919.
- The SS-8 and your tax return are sent to different places so double-check the addresses!

What happens next?

After you file an SS-8, the SS-8 unit of the IRS will send a letter of receipt, a case number, and a phone number where you can check on its status.

The SS-8 unit will also reach out to your employer to hear their side. They may ask you for more information, too. It can sometimes take a year or more to resolve a misclassification case, but this is the only way to get the Social Security credits you're owed and pay the right amount of taxes.

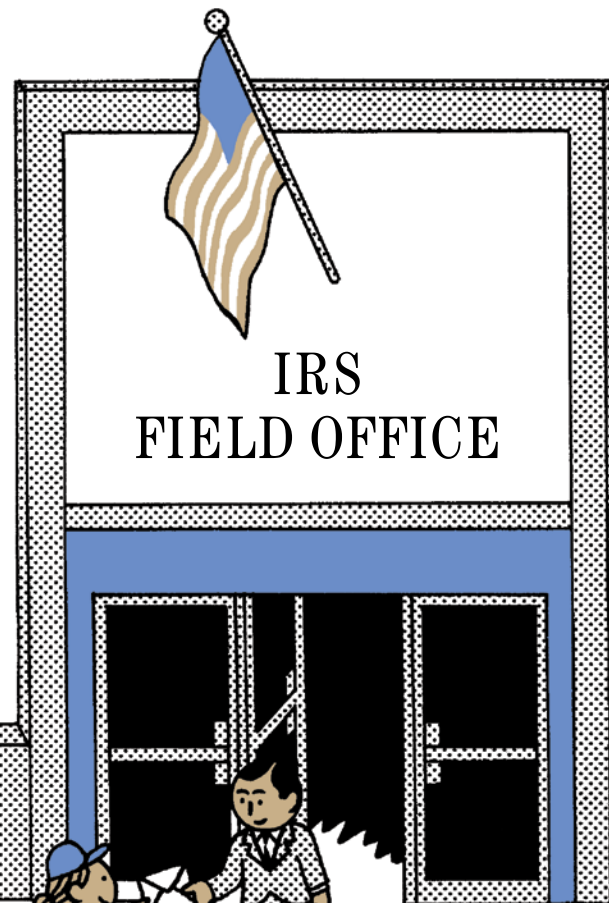
If the SS-8 unit decides you're an employee, and you still work for that employer, the employer should start withholding taxes, and give you a W-2 at the end of the year. Even if your employer doesn't give you a W-2, you're an employee if the SS-8 unit says you are! Use your SS-8 decision and file your tax returns using Form 8919 as long as you keep working for that employer.

If the SS-8 unit says you're not an employee, you can ask them to take a second look at your case. You can give them more information or tell them they didn't consider everything you put on your original SS-8 form.

Contact

a Low Income Taxpayer Clinic (LITC). They can help you file an SS-8 or any other forms mentioned here. Visit taxpayeradvocate.irs.gov/litc to find your nearest LITC. For help filling an SS-8 out, visit: [mys8.org](https://www.mys8.org)

The SS-8 is not anonymous. File an SS-8 when you are ready for your boss to know you've filed a complaint. You can also wait until after you've left that job to file an SS-8 (but there's a time limit to claiming a refund!).



How do I get a refund if I was misclassified and already paid the extra taxes?

File a Form 1040X (an amended tax return) with a Form 8919 to get a refund. You can only do this *after* you've filed an SS-8.

There's also a time limit to claim your refund. You generally have 3 years from when the tax return was due or 2 years from the tax payment you're trying to get back.

There are people who can help if you have questions about any of these forms, or fighting misclassification! You can get help from an LITC!

LITCs provide free or low-cost legal help for low income people who are having tax issues. They can help you file an SS-8 and any other forms mentioned here. Find your closest LITC here: taxpayeradvocate.irs.gov/litc

More ways to fight misclassification

Stay anonymous

The SS-8 isn't confidential. If you feel unsafe filing one, Form 211 or Form 3949-a are confidential ways to report your employer to the IRS. You can find those forms at [irs.gov](https://www.irs.gov).

These forms won't reduce the amount of taxes you owe or make sure you're getting Social Security credits. The best way to do that is by filing an SS-8.

Talk to your coworkers

If you think your employer is misclassifying you, chances are your coworkers are being misclassified too. Talk to them about their experience. You're more likely to change things and be protected by the law as a group than as an individual.

File a Complaint

File with your State or Local Department of Labor. If they find out that your employer is misclassifying workers, your employer will have to start withholding taxes and giving their employees W-2s. (But if you want to take action for past misclassification, you may still have to take some of the steps listed earlier in the guide.) Contact your local or state labor office here: [dol.gov/agencies/whd/state/contacts](https://www.dol.gov/agencies/whd/state/contacts)

For more help

Contact your nearest LITC: taxpayeradvocate.irs.gov/litc

Contact Philadelphia Legal Assistance at philalegal.org or 215-981-3800.



MAKING POLICY PUBLIC is a program of the [Center for Urban Pedagogy \(CUP\)](https://www.cup.edu). CUP partners with policy advocates and graphic designers to produce foldout posters that explain complicated policy issues, like this one.

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THE PHILADELPHIA LEGAL ASSISTANCE TAXPAYER SUPPORT CLINIC provides free advice and, in some cases, representation for taxpayers who have tax issues with the Internal Revenue Service (IRS) philalegal.org/taxpayer-support-clinic

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