



Employee Misclassification in New Jersey: Examining the Variation by Industry and Region

Report by Daniel J. Galvin • Janice Fine • Jenn Round

This memo analyzes employee misclassification in New Jersey between 2009 and 2019 using data supplied by the New Jersey Department of Labor and Workforce Development – Division of Employer Accounts.

When workers are improperly classified as independent contractors, rather than as employees, they are unable to take advantage of New Jersey’s Earned Paid Sick Leave law, which applies to all full-time, part-time, and temporary employees, but not to independent contractors. In addition to earned sick leave, misclassified workers are illegally denied protections under other state wage and hour laws as well.

This memo identifies which industries, in which regions of the state, are most likely to misclassify their employees. It is our hope that these data help the New Jersey DOL target priority industries for strategic enforcement.

I. Variation across Industries, 2009-2019

Between 2009 and 2019, the construction industry had the highest misclassification rate, followed by arts, entertainment, and recreation. Although wood product manufacturing and internet service providers and data processing services are smaller industries, their misclassification rates ranked among the highest as well. Educational services, real estate and rental and leasing, and agriculture were also among the highest. As we will see below, in certain areas of the state, the latter industries ranked as the most problematic.¹

Industry Misclassification Rates, 2009-2019				
Industry	Employee Misclassification Rate	Number of Misclassified Employees	Total Number of Employees	Total Gross Wages Under Reported
Construction	8.0%	12,236	153,503	\$24,323,008,345
Arts, entertainment, and recreation	6.7%	4,591	68,579	\$560,443,929
Wood product manufacturing	6.2%	148	2,383	\$224,894,211
Internet service providers & data proc.	4.7%	103	2,205	\$525,803,379
Educational services	4.6%	3,589	78,075	\$788,951,719
Real estate and rental and leasing	3.9%	2,308	59,534	\$13,855,737
Agriculture	3.9%	151	3,909	\$964,915,966
Membership associations and orgs	3.3%	1,164	35,060	\$624,050,538
Printing, publishing, and allied industrs	3.3%	925	28,141	\$7,565,263
Personal and laundry services	3.3%	2,060	62,955	\$81,202,658
Transportation and warehousing	2.8%	5,367	193,290	\$9,512,465,265
Repair and maintenance	2.5%	801	32,644	\$3,778,356
Health care and social assistance	2.2%	12,626	585,096	\$111,142,258
Motion picture and sound recording	2.0%	134	6,605	\$86,526,941
Administrative and support and waste	1.8%	4,701	254,572	\$14,850,102
Professional, scientific, and technical sv	1.6%	4,346	279,083	\$35,041,272
Other information services	1.4%	112	7,741	\$51,192,205
Plastics and rubber products	1.1%	152	13,282	\$50,640,628
Textile, apparel, and leather manufact.	1.0%	107	11,008	\$11,388,179
Telecommunications	0.8%	174	21,269	\$69,614,291
Retail trade	0.7%	3,322	443,375	\$18,759,302
Food services and drinking places	0.7%	2,016	269,327	\$39,791,796
Wholesale trade	0.7%	1,274	179,958	\$3,175,777,859
Finance and insurance	0.7%	1,225	174,749	\$1,293,384,580
Accommodation	0.7%	339	51,798	\$974,033,897

¹ Note: One major “outlier” case is excluded. A Region 1A audit on 2/22/19 resulted in 99,999 cases of misclassification in the Administrative and Support and Waste Management and Remediation Services industry.

II. Regional Variation

To examine geographical variation in employee misclassification across the state of New Jersey, we created eight regional groupings of counties that approximate DOL's Region Teams but are of sufficient size to generate meaningful descriptive statistics. They are as follows:

- Group 1: Hudson (corresponding roughly to DOL Region Team 1A)
- Group 2: Essex, Passaic (corresponding roughly to DOL Region Teams 1B, 1I, 1M, & 4I)
- Group 3: Bergen (corresponding roughly to DOL Region Team 1C)
- Group 4: Morris, Sussex, Warren (corresponding roughly to DOL Region Team 2A)
- Group 5: Middlesex, Union (corresponding roughly to DOL Region Team 2B)
- Group 6: Hunterdon, Mercer, Somerset (2C, 2I)
- Group 7: Burlington, Camden, Gloucester, Salem (3A)
- Group 8: Atlantic, Cape May, Cumberland, Monmouth, Ocean (3B, 3C, 3I, 4A)

In different parts of the state, different industries rise to the top of the list. While there are likely some surprises, much is as expected, given predominant industries within counties. Construction ranks #1 in Groups 1, 2, and 3. Agriculture ranks #1 in Group 4 (Morris, Sussex, and Warren counties). Although internet service providers and data processing services, and wood product manufacturing are small industries, they have high violation rates in many regions. Below we rank the 10 industries with the highest misclassification rate in each regional group.

Group 1: Hudson (1A)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Construction	775	4985	15.5%
Telecommunications	78	665	11.7%
Personal and laundry services	255	3453	7.4%
Membership associations and organizations	74	1145	6.5%
Educational services	234	4403	5.3%
Repair and maintenance	69	1342	5.1%
Arts, entertainment, and recreation	170	3460	4.9%
Real estate and rental and leasing	230	5679	4.1%
Transportation and warehousing	892	22091	4.0%
Health care and social assistance	1070	30127	3.6%

Group 2: Essex, Passaic (1B, 1I, 1M, & 4I)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Construction	1654	18885	8.8%
Internet service providers and data processing svcs	21	290	7.2%
Printing, publishing, and allied industries	141	3076	4.6%
Miscellaneous and not specified manufacturing	53	1357	3.9%
Real estate and rental and leasing	251	8436	3.0%
Arts, entertainment, and recreation	188	6374	2.9%
Educational services	267	10940	2.4%
Transportation and warehousing	750	32848	2.3%
Personal and laundry services	194	8691	2.2%
Professional, scientific, and technical services	620	28196	2.2%

Group 3: Bergen (1C)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Construction	1633	16616	9.8%
Personal and laundry services	616	8489	7.3%
Membership associations and organizations	197	2999	6.6%
Arts, entertainment, and recreation	509	8802	5.8%
Educational services	551	10180	5.4%
Transportation and warehousing	723	15682	4.6%
Printing, publishing, and allied industries	166	4306	3.9%
Textile, apparel, and leather manufacturing	40	1296	3.1%
Wood product manufacturing	11	364	3.0%
Health care and social assistance	2032	76925	2.6%

Group 4: Morris, Sussex, Warren (2A)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Agriculture	44	171	25.8%
Plastics and rubber products	110	641	17.2%
Arts, entertainment, and recreation	735	7123	10.3%
Construction	1500	14751	10.2%
Motion picture and sound recording industries	51	581	8.8%
Transportation and warehousing	664	8583	7.7%
Printing, publishing, and allied industries	141	2205	6.4%
Membership associations and organizations	211	4046	5.2%
Repair and maintenance	148	3069	4.8%
Real estate and rental and leasing	225	5281	4.3%

Group 5: Middlesex, Union (2B)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Educational services	454	6298	7.2%
Arts, entertainment, and recreation	382	6927	5.5%
Construction	1282	25160	5.1%
Other information services	27	587	4.6%
Wood product manufacturing	4	102	3.9%
Repair and maintenance	149	6248	2.4%
Membership associations and organizations	149	7352	2.0%
Private households	32	1658	1.9%
Health care and social assistance	1455	83818	1.7%
Real estate and rental and leasing	158	9102	1.7%

Group 6: Hunterdon, Mercer, Somerset (2C, 2I)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Internet service providers and data processing svcs	8	80	10.0%
Agriculture	31	440	7.1%
Arts, entertainment, and recreation	478	6922	6.9%
Construction	495	15313	3.2%
Motion picture and sound recording industries	9	311	2.9%
Other information services	19	787	2.4%
Transportation and warehousing	266	15054	1.8%
Real estate and rental and leasing	102	5930	1.7%
Educational services	327	19704	1.7%
Health care and social assistance	912	55999	1.6%

Group 7: Burlington, Camden, Gloucester, Salem (3A)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Internet service providers and data processing svcs	27	359	7.5%
Arts, entertainment, and recreation	745	10031	7.4%
Construction	1373	23492	5.8%
Membership associations and organizations	147	2840	5.2%
Wood product manufacturing	6	181	3.3%
Educational services	188	6589	2.9%
Administrative and support and waste mgmt	815	34012	2.4%
Real estate and rental and leasing	164	7469	2.2%
Personal and laundry services	173	8465	2.0%
Health care and social assistance	1346	90565	1.5%

Group 8: Atlantic, Cape May, Cumberland, Monmouth, Ocean (3B, 3C, 3I, 4A)			
Industry	Total Number of Misclassified Workers, 2009-2019	Average Estimated Annual Number of Employees in Industry (in Region)	Employee Misclassification Rate
Wood product manufacturing	109	546	20.0%
Internet service providers and data processing svcs	24	180	13.3%
Transportation and warehousing	1369	12813	10.7%
Real estate and rental and leasing	970	9385	10.3%
Construction	3524	34301	10.3%
Educational services	1285	12689	10.1%
Printing, publishing, and allied industries	276	3333	8.3%
Arts, entertainment, and recreation	1384	18940	7.3%
Membership associations and organizations	307	5491	5.6%
Motion picture and sound recording industries	24	483	5.0%

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About CIWO

The Center for Innovation in Worker Organization (CIWO) is a “think and do tank” launched in 2014 and housed at Rutgers SMLR. CIWO's mission is to promote strong workers' organizations and shift the balance of power towards greater economic and social equity. CIWO leverages the resources of a highly respected research university to create a centralized go-to institution for strategic and organizational development. CIWO's primary objectives are to facilitate the generation and dissemination of ideas, strategies, and programs for worker centers, community organizations, labor unions and their local, state and national networks.

Appendix: Data and Methods

This report uses three types of data: Employer Accounts Data (supplied by the New Jersey Department of Labor and Workforce Development – Division of Employer Accounts), Current Population Survey (CPS) - Merged Outgoing Rotation Group data, and Quarterly Census of Employment and Wages (QCEW)—the latter two to generate employment estimates at the county level.

QCEW data is used to estimate sectoral employment for most industries. CPS-MORG data is used to estimate employment size for industries not covered by QCEW data (domestic work and agriculture) and industries with sample sizes too small for QCEW to disclose figures in certain counties. The latter include: wood product manufacturing, textile, apparel, and leather manufacturing; internet service providers; motion picture and sound recording; other information services. For more on QCEW data, see <https://www.bls.gov/cew/publications/employment-and-wages-annual-averages/current/home.htm#exclusions> and <https://www.bls.gov/opub/hom/cew/concepts.htm#scope-and-exclusions>.

Industries with fewer than 100 misclassified employees between 2009 and 2019 are excluded.

Also excluded from this report is one major “outlier” case. On February 22, 2019 an audit was completed in Region 1A that resulted in 99,999 cases of employee misclassification in the Administrative and Support and Waste Management and Remediation Services industry, with over \$9 billion gross wages and \$522 million contributions underreported.

Geographic Groups

As noted, to create large enough geographic groups for statistical purposes, we combined several counties, making every effort to approximate New Jersey DOL’s Region Teams while balancing observations across groups. The N (in CPS data) for each group was as follows (note that group zero includes respondents with no geographic identifiers):

Group Number	Sample Size
Group 0 (no geographic identifying information)	338
Group 1 (Hudson)	2,736
Group 2 (Essex, Passaic)	3,525
Group 3 (Bergen)	4,235
Group 4 (Morris, Sussex, Warren)	3,470
Group 5 (Hunterdon, Mercer, Middlesex, Somerset, Union)	6,410
Group 6 (Burlington, Camden, Gloucester, Salem)	4,155
Group 7 (Atlantic, Cape May, Cumberland, Monmouth, Ocean)	4,720

Group 8 (New York-Northern New Jersey-Long Island CBSA 35620 (NJ only))	6,987
Group 9 (Philadelphia-Camden-Wilmington CBSA 37980 (NJ only))	1,170
Total	37,746