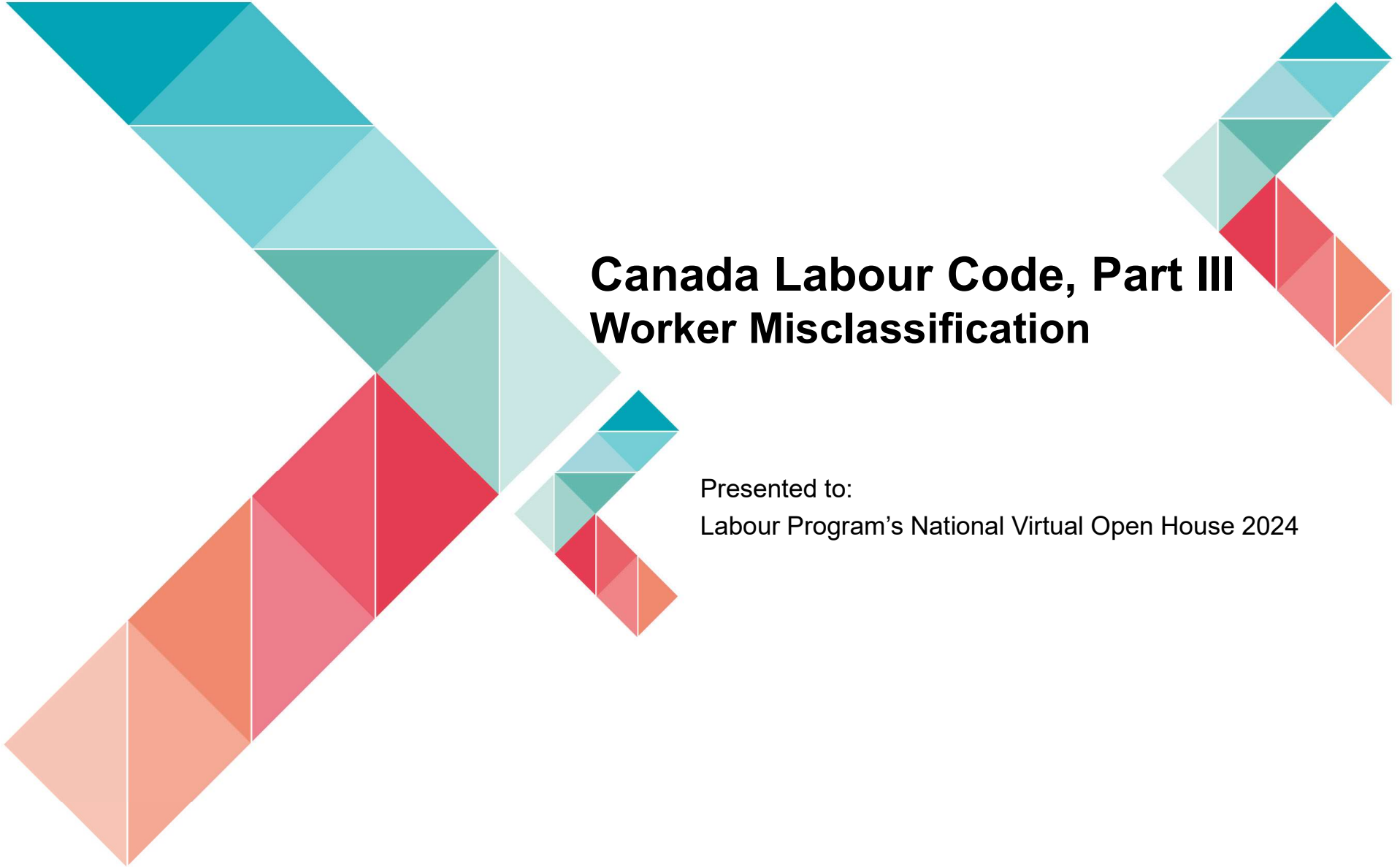




Canada Labour Code, Part III Worker Misclassification

Presented to:
Labour Program's National Virtual Open House 2024



Overview

- Worker Misclassification
- Definitions
- Assessing the Employer-Employee Relationship
- Addressing Misclassification
- Labour Program: Contact and References



Worker Misclassification

- Misclassification often occurs when an employer considers a worker to be an independent contractor rather than an employee.
 - The determination of whether an employer – employee relationship exists is rooted in law.
- This misclassification can result in the employee not receiving their labour standards entitlements under Part III of the Code, or other protections under various legislation.
- Misclassification is **illegal** under the *Canada Labour Code*.



Definitions



Definitions

- Employer:
 - A person who employs one or more employees (CLC s.166)
 - Any person who acts on behalf of an employer
 - An employers' organization
- Employee: no definition under Part III of the Code



Definitions

- **Contract of service: Employer–employee relationship**
 - Contract in which a person (employee) undertakes to do work for remuneration, according to instructions and under direction or control of another person (employer), for limited or indeterminate period of time
- **Contract for service: Business relationship**
 - Contract in which a person (independent contractor or service provider) makes a commitment to another person (client) to carry out material or intellectual work or to provide a service for a set price or fee and with no relationship of subordination

*Definitions are taken from case law.



Assessing the Employer- Employee Relationship



Why is the employer-employee relationship important?

- When an employer–employee relationship exists, labour standards apply, such as:
 - Hours of work, minimum wage, vacation pay, holidays, etc.
 - Leave from work when sick or to take care of a critically ill family member, etc.
 - Maternity and parental leave
 - Protection from unjust dismissal and ability to make a complaint if you haven't received earned wages
 - Occupation Health and Safety protections
- This is **important** for all employees to know when they accept a job in a federally regulated industry



How is the employer-employee relationship determined?

- Control Test
 - Presence or absence of control by manager or supervisor
- Four-fold Test: *Whose business is it?*
 - Control
 - Ownership of the tools
 - Chance of profit
 - Risk of loss
- Integration Test



Employer-Employee Relationship Questionnaire

- A detailed questionnaire is sent to the parties to obtain information about the employment relationship
- The responses provided (together with all other relevant information) are assessed against the relevant legal tests
- Examples from the questionnaire sent to the employer:
 - Did the worker have authority to decline work?
 - Did you provide the equipment/vehicle required for the performance of the worker's work?
 - If road transportation, did the worker own the operating authority to cross borders?
 - Was the worker permitted to perform similar work for others while working for you?



Employee Characteristics

- **Worker:**
 - Works exclusively for payer and must perform services
 - Regularly reports to payer's workplace
 - Paid vacation pay
- **Payer:**
 - Provides tools and controls duties (whether exercised or not)
 - Sets working hours
 - Pays salary or hourly wage and pays expenses
 - Offers pension and group benefits



Independent Contractor Characteristics

- **Worker:**
 - May work for other payers and may accept or reject work
 - Provides own tools and may hire someone else to do job
 - Sets own working hours and pays own expenses
 - Decides how task is completed
 - Submits invoice to payer for payment
 - Paid by job on predetermined basis
 - No vacation pay, no overtime pay
 - Not permitted to participate in payer's benefit plans



Addressing Misclassification



Misclassification & the *Canada Labour Code*

Misclassification occurs when an employer does not consider or treat a person who is an employee, as an employee.

- An employer is **prohibited** from treating an employee as if they were not their employee. (s.167.1)

A person who is paid for work by an employer is presumed to be their employee unless proved otherwise.

s.167.01(1)

If an employer alleges that a person is not their employee, the burden of proof is on the employer.

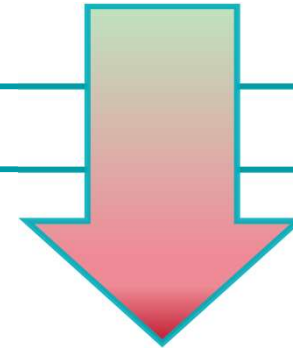
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How is misclassification addressed?

After an investigation of a complaint or inspection of a workplace, if misclassification is found:

- employers are informed of the misclassification and provided with information to correct their practices.
- employers may be issued an Assurance of Voluntary Compliance (AVC) that outlines the corrective measures they will take to address the misclassification.



An employer may be subject to further enforcement action, if:

- corrective measures are not implemented, and
- there is evidence that non-compliance continues

Further enforcement actions may include:

- a payment order, including administrative fees
- a Compliance Order
- an Administrative Monetary Penalty (AMP), or
- public naming of the employer.



Labour Program Contact & References

For further questions and information:

☎ Toll-free: 1-800-641-4049

✉ Email: NA-ERO-GD@labour-travail.gc.ca

Supporting documents:

- [Determining the employer/employee relationship](#)
- [Misclassification](#)
- [Misclassification in the Road Transportation Industry: Awareness Kit - Canada.ca](#)
- [Administrative Monetary Penalties](#)

