



Respondent Misclassification: Research Participants are Independent Contractors, Not Employees

Marketing research participants and mystery shoppers are independent contractors, *not* employees of research companies.

Background

The U.S. Department of Labor, IRS, and state labor and tax agencies sometimes claim that respondents receiving incentives for participation in marketing research¹ or mystery shopping² should be treated as employees of the companies conducting the research. This can bring responsibility for unemployment insurance payments, other taxes and fees, minimum wage, overtime pay, extra recordkeeping, and more.

However, marketing research participants and mystery shoppers who receive compensation for their time and effort are independent contractors and should be treated as such.

Some participants in marketing research studies, such as focus groups, receive reimbursement for their participation in a study, depending on the length and circumstances of the study, the specialized knowledge or background of the participant, etc. However, research companies that conduct these studies sometimes face cases in which a person receiving a small reimbursement for participating in a single focus group study is characterized as an employee of the firm conducting the study.

Mystery shopping opportunities are offered on an event by event basis for a fixed fee for completing an evaluation. Because a mystery shopping visit must be conducted incognito, a firm cannot engage the same mystery shopper to conduct multiple evaluations of the same client location, but instead must engage a different shopper for each such evaluation. The mystery shopping industry operates principally online, usually without any human contact between the mystery shopper and the firm.

Research and mystery shopping participants are obtained according to the demographic or other specific needs of a client; participation is voluntary, and participants are free to opt-out at any time.

A person cannot make a living as a marketing research participant

Research and mystery shopping participants may participate in multiple studies at the same time, but that participation is not a profession, and participants cannot easily make a living at it. In fact, the research industry goes to great lengths to prevent individuals from participating in too many research studies, referred to as “cheater-repeaters”. Individuals that attempt to make a living this way produce skewed data instead of representative data. Cheater-repeaters also threaten the integrity of research results because they frequently get onto panels using fake ID and data, and similarly provide fake or erroneous responses to questions.

The Insights Association position: Research companies require certainty in independent contractor status

While it might appear viscerally obvious that marketing research and mystery shopping participants are not employees, the firms that contract with these individuals face troubling challenges to that nonemployee status by government agencies.³ The cost of defending against these challenges and the uncertainty they create has a material negative effect on the industry. It also threatens the integrity of the research process and the research results that people, companies and the government rely upon every day to be able to learn and understand consumer attitude, behavior and opinion.

¹ Marketing research is the process of acquiring, analyzing and understanding opinions, attitudes and experiences from the public, regarding products, services, issues, candidates and other topics. That data is used to develop new products, improve services, and guide policy. It is used by all kinds of entities, including health care providers, private businesses and academic institutions. In fact, government is the largest consumer of marketing research in the United States. No sales, promotional or marketing efforts are involved in bona fide research, and it is not intended to influence a participant’s attitudes or behavior.

² Mystery shopping is a means of measuring the extent to which a company's operating policies are being carried out in the field and of measuring company performance. A specialized type of marketing research, it is used in virtually all business sectors to capture and measure the actual customer experience compared to the experience a company desires the customer to have. The data is used to improve training, reward positive performance, reveal operational deficiencies, and otherwise enhance business operations to maximize positive customer experiences and, thus, the company's bottom line.

³ In 2012, the Insights Association and the Mystery Shopping Providers Association helped to draft and build support for the Research Fairness Act (H.R. 5915), legislation that would have clarified this nonemployee status in federal labor law.