

Eleventh Report of the Joint Agency Task Force on Employee Misclassification Enforcement

September 1, 2021

Executive Order #2010-3 dated September 3, 2010, and issued by Governor John H. Lynch, established the Joint Agency Task Force on Employee Misclassification Enforcement. The Task Force is comprised of state agencies with direct oversight or interest concerning the classification of individuals in New Hampshire's workforce.

The Task Force mission statement, consistent with the enabling Executive Order, states as follows:

The New Hampshire Joint Agency Task Force on Employee Misclassification Enforcement is committed to reducing the number of workers who are wrongly classified as independent contractors when their labor is truly employment.

Individuals and businesses who misclassify workers do so in violation of labor, employment, tax, insurance and occupational safety laws, by failing to pay required wages, carry workers' compensation insurance, comply with health, safety and licensing requirements, or pay income taxes and payroll taxes that fund unemployment insurance, disability insurance, and Medicare and Social Security benefits.

The Joint Task Force seeks ways to identify those situations where misclassification is occurring by sharing information each agency already has, and helping coordinate enforcement policies and procedures.

The Joint Task Force seeks to reduce the number of employers who fail to classify their workers properly and who fail to follow all legal steps to assure full legal protection for workers. The Joint Task Force will educate and encourage employers to learn how to treat workers appropriately. The Joint Task Force will recommend more effective mechanisms to sanction those employers who intentionally violate the law for their own unfair advantage over workers and business competitors.

Actions Taken During the Year

NH Employment Security (NHES) kept track of its enforcement efforts concerning misclassified workers specifically. For the calendar year 2020, it performed 109 field audits, resulting in determinations that 112 workers had been misclassified. NHES ordered correction, including \$1,762,080 in additional reported wages, and \$36,159 in additional taxes. The Department of Labor (DOL) took efforts to improve its misclassification efforts, specifically seeking to enhance follow up inspection efforts against entities with serial patterns of problematic practice. Notably, both agencies would offer that certain misclassification efforts were impacted by their respective roles in dealing with the disruptive effects of COVID.

Future Efforts

The Task Force continues to improve the interagency referral of issues. The group continues to review enacted legislation/regulation in surrounding states in order to discern if there are best practices which could be considered in the context of New Hampshire's regulatory activities.

The Task Force welcomes any ideas or suggestions for other approaches that could address the serious problems associated with employee misclassification.

Respectfully submitted,

The Joint Agency Task Force on Employee Misclassification Enforcement