

**Sixth Report of the
Joint Agency Task Force on
Employee Misclassification Enforcement**

September 1, 2016

Executive Order number 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 eight commissioners and the attorney general, or their designees, from the departments of Labor, Insurance, Employment Security, Revenue Administration, Administrative Services, Transportation, Environmental Services, Information Technology, and Justice.

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 2015, it performed 513 field audits, resulting in determinations that 745 workers had been misclassified. NHES ordered correction, including \$7,324,363 in additional reported wages, and \$130,967 in additional taxes.

The Task Force has continued its efforts to prevent worker misclassification by educating employers and workers.

Every newly organized corporation in New Hampshire (over a thousand each month) receives from the Secretary of State a mailed welcoming packet that explains misclassification problems and how employers can avoid such problems.

Misclassified workers are harder to reach, of course, because they are not members of organizations through which communication can be directed to them. Accordingly, the Task Force has sought effective methods of spreading the word to such workers about how to seek help if necessary. We investigated two methods which we thought had merit—more graphic posters, and the use of a phone app.

RSA 275:49 already requires workplace posters about classifying a worker as an employee or as an independent contractor. The current version from the Department of Labor follows the traditional pattern of all-text. We suggest a more eye-catching version of the poster, including photos of workers in jobs where misclassification might typically occur.

A second possible outreach to misclassified workers which the Task Force is researching is a phone app which has been developed and deployed in New York City. It allows

workers to gather and share information about their work and their employers, to assemble evidence of violations and claims for full payment.

We continue the process to refine the Task Force website (www.nh.gov/nhworkers) to report suspicions about employers who may be misclassifying workers, including anonymous reporting.

The legislature considered, but did not pass, legislation to make the legal definition of “employee” identical for both the departments of Labor and Employment Security. Each department continues its enforcement efforts using its own traditional methods and definitions.

The legislature also passed legislation, RSA Chapter 376-A, dealing with “transportation network companies”, such as Uber. These companies, and many other “app-based services”, have a business model that relies upon independent contractors performing work, in a pattern which may come close to being employee misclassification. RSA Chapter 376-A does not address worker classification directly, but leaves it up to each company’s contract with workers as to the extent of direction, management, and control.

Future Efforts

The Task Force will continue to expand its education and outreach efforts to prevent employee misclassification from occurring.

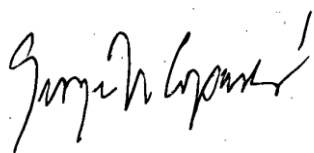
We continue to watch the experience of Maine to see if its recent laws help avoid misclassification or aid in enforcement. Similarly, we will monitor the efforts of the Commonwealth of Massachusetts, which is attempting to prevent misclassification through the mechanism of bringing lawsuits against employers for unfair trade practices.

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

Respectfully submitted,

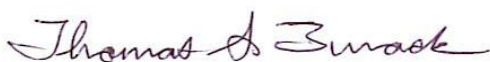


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