

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

November 1, 2013

Executive Order #2010-3 dated September 3, 2010, issued by Governor John H. Lynch, established the Joint Agency Task Force (Task Force) on Employee Misclassification Enforcement. The Task Force is composed 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

Pursuant to a memorandum of understanding to share information, the Departments of Labor and Employment Security continue to work together by sharing employee information gathered by their respective agencies and regulatory systems. This allows each agency to learn about each other's employee data and cross reference information to determine whether the regulated employers are in compliance with laws administered and enforced by both. The Department of Labor has found many employers who lacked workers' compensation coverage as required by law and has worked to get these employers into compliance to the benefit and protection of workers.

The Task Force has continued its efforts to prevent worker misclassification by educating employers and workers. The Task Force continued its outreach efforts through group meetings, mailings and handouts, among other efforts, to spread the word about the harm misclassification causes to employees, businesses and the economy of the State. The Task Force continues to include educational information in the materials mailed by the Secretary of State to all newly registered businesses. According to the Secretary of State's Office, several hundred packets are sent out each week.

The Task Force also continues to provide information to the public through its online website (www.nh.gov/nhworkers). The process to report suspicions about employers who may be misclassifying workers, including anonymous reporting, was simplified to make it easier for the public to inform the State about possible employee misclassification.

As part of the Task Force's effort to reach out to workers, a special meeting was conducted at a union training hall in Manchester where it heard from workers from all over the State about their experiences and concerns. Through this effort the Task Force gained important insights about the scope of the problems misclassified and undocumented workers encounter, including late or short wage payments, inability to

seek government assistance, language barriers and even physical assault and intimidation. Information from these talks led to several worksite inspections conducted by the Department of Labor.

Future Efforts

The Task Force will continue to expand its education and outreach efforts to prevent employee misclassification from occurring. In addition to the efforts noted above, it is hoped that media opportunities, such as video public service announcements for television and internet video, will further the efforts of the Task Force to inform the public of the harm employee misclassification can cause our citizens and businesses, especially small businesses.

The Executive Order creating the Task Force requires it to recommend legislative or regulatory measures to improve employee misclassification enforcement and identify successful preventive mechanisms for reducing employee misclassification. Various proposals have been considered and continue to be examined. One measure considered and debated by the Task Force was legislation that would enable state agencies, after appropriate and constitutional levels of equal protection and due process have been applied, to coordinate enforcement efforts by linking license renewals and other appropriate state benefits offered by other state agencies to comply with wage, tax and worker safety laws. Current law does not permit such cross-referencing of governmental enforcement, yet, in particular instances, it may be appropriate. The Task Force is confident that a coordinated effort would greatly reduce the number of employers who intentionally violate the law by misclassifying their employees. It also recognizes that legislation of this type could have unintended consequences for New Hampshire businesses and, therefore, it will endeavor to examine the merits of this proposal as well as any alternative approaches to addressing this problem that may be submitted to it for consideration.

In extreme instances and with judicial oversight, the Task Force believes consideration should be given to legislation that would provide a regulatory agency with the authority

to seek and issue stop-work orders in those instances in which employee safety is at risk or in which and where there has been a flagrant and demonstrable disregard of safety and employment law. In this regard, the Task Force intends to study the methods and experiences of other New England states and incorporate best practices, including such measures as judicial oversight, adequate notice and meaningful appeal procedures in any legislative proposal that it may consider.

A third proposal being considered would expand the personal and individual liability for those involved, either directly or indirectly, with misrepresenting the status of workers beyond the immediate and direct employer. One state reviewed by the Task Force uses criminal penalties and significant fines to deter and, if need be, punish errant employers from avoiding the true cost of doing business at the expense of workers and to the disadvantage of law-abiding competitors. The Task Force is aware of situations in which there are many levels of contractors working on jobsites (general contractor and many layers of sub-contractors) and misclassified workers are at the bottom of the pyramid. The Task Force believes that in some instances these workers are fraudulently being treated as independent contractors. Current law allows enforcement activity against only the immediate employer of those workers and not against higher levels of corporate officers, directors, contractors or developers who knew, or should have known, of the misclassification and profited from it. The Task Force intends to study legislative approaches that would hold corporate officers, directors, higher level contractors and developers accountable for misclassification in appropriate situations, just as they are now accountable for unpaid wages and workers' compensation benefits.

The Task Force welcomes any ideas or suggestions for other approaches that could be used to craft proposed legislation to address the serious problems associated with employee misclassification.

Respectfully submitted,

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