

New Jersey Task Force on Independent Contractor Misclassification Releases Report, Recommendations

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The New Jersey “Task Force on Employee Misclassification” has released its report on misclassification, offering 10 recommendations.

The Task Force, established in May 2018, was charged with providing recommendations to the Governor’s office and the state’s administrative agencies on “strategies and actions to combat employee misclassification.” The Task Force includes representatives from the state’s departments of Labor and Workforce Development, Treasury, Law and Public Safety, Agriculture, Banking and Insurance, Human Services, Transportation, and the Economic Development Authority.

According to the [Report](#), released on July 9, 2019:

Misclassification is the practice of illegally and improperly classifying workers as independent contractors, rather than employees. This practice has increased by approximately 40% in the last ten years, and is a growing problem in New Jersey (and other states). This increase can be attributable to the “fissured workplace,” where firms distribute activities through an extensive network of contracting, outsourcing, franchising, and ownership in an effort to limit legal exposure and increase profits; and is marked by declining wages, eroding benefits, inadequate health and safety conditions, and ever-widening income inequality.

The Task Force observed that misclassification appears to be “prevalent” in “construction, janitorial services, home care, transportation, trucking and delivery services, and other labor-intensive low-wage sectors, where employers can gain a competitive advantage by driving down payroll costs.”

The Task Force stated that its 10 recommendations are designed to identify employers that are misclassifying, increase enforcement efforts, and deter the practice of misclassification. Its recommendations are as follows:

- **Education and Outreach:** Create reporting mechanisms so misclassified employees can alert the state department of labor (DOL) to perceived misclassifications, develop employer notice/poster requirements to explain the issue to workers, and increase public awareness of the issue.
- **Strengthen Public Contracts:** Require contracting businesses to represent affirmatively that they are aware of the state’s ABC Test (which presumes a worker is an employee unless the employer can prove otherwise) and acknowledge that misclassification could result in contractual termination.
- **Coordinated Enforcement:** Perform and facilitate stronger enforcement efforts using, for example, “joint enforcement sweeps” that capitalize on each participating agency’s expertise;

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Related Services

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- *Interagency Data Sharing:*Create and promote interagency information sharing intended to identify employers that are misclassifying employees, establish a list of employers that have misclassified to dissuade other businesses from doing business with them.
- *Cooperating Among States:*Promote sharing of investigative reports, enforcement records, employer records, and related materials with neighboring states.
- *Interagency Cross-Training:*Develop programs for field-investigators to ensure issues spotting in field visits.
- *Criminal Prosecution:*Refer violators, including the business owners themselves, to the Office of the Attorney General for criminal prosecution.
- *Enforce Workers' Compensation Laws:*Use existing monetary and penal schemes in the Workers' Compensation law to increase deterrence.
- *Use the DOL's Stop Work Powers:*Start using the DOL's broad power to revoke and suspend business licenses to increase deterrence.
- *Advocate for New Legislation:*Propose and advocate for legislation that requires misclassification posters, promotes DOL's stop work power, gives DOL access to tax records, imposes liability on joint employers, creates liability for owners and successor entities, imposes costs of investigation on employers, and increases monetary penalties.

Takeaways

New Jersey continues to dedicate valuable resources to the Task Force initiative. The Department of Labor and Workforce Development has hired eight additional investigators to conduct Prevailing Wage Act audits, which may reveal more incidents of non-compliance in the construction industry. The state also commenced an outreach and educational program to licensed accountants, hoping to stem alleged misclassification at its root.

The Task Force's report confirms that agencies will seek opportunities to investigate alleged misclassification and use the full spectrum of enforcement mechanisms available. The stakes of losing at the agency level are high and may cost businesses and owners the right to operate in the state and to continue their relationships with their partners. Potentially higher fines, legal expenditures, and risk of litigation suggest that businesses using independent workforce arrangements should consider evaluating whether their model is defensible and appropriate for the services they are outsourcing to independent contractors.

The knowledgeable practitioners at Jackson Lewis are available to help your business evaluate its independent workforce arrangements, lower risks, and defend the company against misclassification lawsuits.

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