

Gov. Evers Creates Task Force to Address Worker Misclassification

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Practice Area: Labor and Employment

On April 15, 2019 Governor Evers signed Executive Order #20, creating the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification. The Task Force is intended to address issues of worker misclassification, specifically independent contractor status, in the State of Wisconsin by improving interagency cooperation in the enforcement of Wisconsin's Wage and Hour laws.

What is Worker Misclassification?

The Order addresses worker misclassification issues that revolve around workers being improperly classified as independent contractors instead of employees of the employer. When an employee is misclassified as an independent contractor, employers can face liability for unpaid overtime that otherwise would have been due. Further, tax penalties may apply due to the failure to properly withhold taxes from the employee's income.

Importantly, though exempt vs. non-exempt issues also involve misclassification, the Order specifically deals with independent contractor vs. employee misclassification.

What Will the Task Force Do?

The Task Force, which will be staffed by the Department of Workforce Development, will facilitate enforcement of worker misclassification matters among the Department of Workforce Development, the Department of Revenue, the Commissioner of Insurance, the Department of Justice, and other relevant agencies. Specifically, the task force will, among other things:

- Evaluate existing misclassification enforcement;
- Facilitate information sharing between agencies;
- Develop recommendations for pooling investigative and enforcement resources;
- Develop best practices for prevention and enforcement;
- Facilitate the filing of complaints and participation of local agencies;
- Enhance reporting and prevention efforts;
- Improve public awareness; and
- Recommend improvements to existing legislation addressing worker misclassification.

What Does this Mean for Employers?

Employers will not see any immediate changes as the Task Force has only recently been created. However, employers should anticipate a potential increase in enforcement and/or litigation for this already hot area of the law. Employers can also expect a more comprehensive approach to violations, including the exchange of investigative information between agencies to better address not only unpaid wages to the employee but also unpaid taxes to the state and other related issues.

The good news is that the law has not changed. Employers who have already taken steps to review the classifications of their workforce and are already in compliance with the law will be in a good position to defend themselves in an enforcement action. Employers who have not taken recent steps to review their workforce will need to evaluate their use of independent contractors and determine whether any of them are actually employees under the law.

The appropriate response to misclassification concerns will vary from employer to employer. There is value in discussing with counsel how to appropriately classify your workforce and how the Task Force may impact your use of independent contractors moving forward.

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