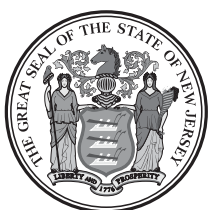


Report
of
Gov. Murphy's
Task Force
on
Employee
Misclassification



JULY 2019

I. Executive Summary

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).¹ 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.²

One of the means by which businesses attempt to gain a competitive advantage is by misclassifying workers to reduce labor costs. Such misclassification deprives workers of a suite of rights guaranteed to employees, but not independent contractors, including the right to earn overtime for working in excess of 40 hours per week; to receive workers' compensation benefits if injured on the job; to receive unemployment benefits; to receive earned sick leave; to take job-protected family leave and receive family leave benefits; to receive health and safety protections, as well as protection under state and federal anti-discrimination laws; and to organize under the National Labor Relations Act.

Misclassification not only hurts workers and law-abiding businesses, it also hurts the State. Based on a 2000 U.S. Department of Labor study of misclassification in construction in New Jersey, the failure to properly classify construction employees resulted in state income taxes not being paid for up to \$11 million in off-the-books employment and nearly \$9 million from employment of misclassified workers.³ In addition, the State lost an estimated \$3.1 to \$6.7 million in foregone unemployment insurance payments in the same year.⁴ Because misclassification has grown since 2000, it is clear that New Jersey has lost tens of millions of dollars every year since 2000 in foregone state income taxes, and unemployment and disability contributions due to misclassification in all industries.

In response to this growing problem, Governor Murphy issued Executive Order No. 25 on May 3, 2018, establishing a Misclassification Task Force to “promote fairness, fight against discrimination, and

1 David Weil, Lots of Employees Get Misclassified as Contractors. Here's Why It Matters, Harvard Business Review, July 5, 2017 <https://hbr.org/2017/07/lots-of-employees-get-misclassified-as-contractors-heres-why-it-matters>

2 David Weil, The Fissured Workplace, Why Work Became So Bad for So Many and What can Be Done,

3 Oliver Cooke et al, The Underground Construction Economy in New Jersey, Stockton University, June 2016, p. 3.

4 Ibid.

work to end unfair labor practices... that create an unfair advantage over companies that play by the rules and hurt our working families.”

The Task Force consists of representatives from the following New Jersey governmental entities:

- Three representatives of the Department of Labor and Workforce Development (“DOL”);
- Three representatives from the Department of Treasury; and,
- One representative each from the Department of Law and Public Safety, the Department of Agriculture, the Department of Banking and Insurance, the Department of Human Services, the Department of Transportation, and the Economic Development Authority.

The Task Force is responsible for:

- Providing advice and recommendations on strategies to combat misclassification, including examining and evaluating existing enforcement by executive departments and agencies;
- Developing best practices to increase coordination of information and efficient enforcement;
- Developing recommendations to foster compliance with the law; and,
- Conducting a review of existing law and applicable procedures related to misclassification.

To address the issue of misclassification, the Task Force and the DOL have taken the following steps:

- Held three task force meetings to fact find with member agencies about current practices to address enforcement issues, coordinate compliance efforts, and develop strategies for achieving compliance;
- Held three public forums in Atlantic City (October 2, 2018), Newark (December 5, 2018), and New Brunswick (January 17, 2019) to hear from employees, employers, subject matter experts, and others affected by misclassification;
- Signed a Memorandum of Cooperation with the United States Department of Labor to increase coordination, communication, and information sharing, a copy of which is attached as Appendix A;⁵
- Commenced interagency cross-training of Division of Consumer Affairs investigators on January 23, 2019, involving personnel in both consumer fraud (who investigate registered businesses such as movers and home improvement contractors) and board enforcement (who oversee 48 boards such as Accountancy, Dentistry, Medical Examiners, and Cosmetology) on identifying employee misclassification in their regulated industries, with other sessions being planned; and,

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⁵ <https://www.dol.gov/whd/workers/MOU/nj.pdf>

- Sent a letter to more than 20,000 licensed New Jersey accountants educating them on the issue of misclassification, a copy of which is attached as Appendix B.
- Signed a Memorandum of Understanding with the New Jersey Economic Development Authority ("EDA") to coordinate enforcement including but not limited to prevailing wage violations and employee misclassification. The MOU provides the EDA will invite DOL to pre-construction meetings, obtain certified payroll reports from EDA assisted projects and share with the DOL electronically, advise the DOL promptly of any complaints, provide assistance to the DOL when complaints are received with EDA projects, and provide assistance in investigations. The MOU further provides the DOL will monitor and enforce EDA projects by reviewing payroll upon receipt of a complaint or referral, conduct site inspections, conduct audits and resolve disputed matters, notify the EDA of complaints, investigate and enforce reported instances of non-compliance, and randomly select and monitor EDA projects.

The following summarizes the Task Force's recommendations, which will be expanded upon at the end of this report:

- **Targeted Education and Public Outreach**

Create a hotline, webpage, and email address to report misclassification; require employers to post notices alerting workers to the issue (through legislation discussed below); raise public awareness through press strategy.

- **Strengthening State Contracting**

Require entities that contract with the state or receive state funding to confirm that they are aware of the legal standard for proper classification of workers based on the ABC test, with potential loss of funding or contract termination if misclassification is found.

- **Interagency Coordinated Enforcement**

Conduct on-the-ground investigations and joint enforcement sweeps with multiple agencies, working together to elicit facts and obtain information using each agency's jurisdictional knowledge and expertise.

- **Data Sharing**

Share information between agencies subject to any applicable confidentiality requirements.

- **Cooperation with Neighboring States**

Work with neighboring states to share information to assist in investigations.

- **Cross-Training**

Provide cross-training for field investigators from various state and local agencies.

- **Criminal Referrals**

Refer cases to the Office of the Attorney General for criminal prosecutions as appropriate.

- **Utilize Workers' Compensation Laws**

Use existing workers' compensation laws to bolster misclassification enforcement.

- **Use DOL's Power to Revoke and Suspend Licenses**

The Commissioner should use his power to revoke or suspend licenses to deter employees from not complying with labor laws.

- **Legislative Recommendations**

Advocate for legislation that:

- Requires public posting of notices re: misclassification;
- Gives the DOL the ability to issue stop-work orders;
- Grants the DOL the same access to tax information as other Cabinet agencies;
- Imposes liability on employers who rely on companies that misclassify in their supply chain, in subcontracts, or other contracts where a joint employment relationship is established;
- Imposes liability on business owners and successor entities that misclassify;
- Requires companies found to misclassify to fund the investigatory costs and any attorney's fees incurred; and,
- Increases fines and penalties.

II. Background on Worker Misclassification

Determining Worker Status

Employers classify their workers as employees or independent contractors. A common employer misconception is that simply by making the decision to issue workers a 1099 Federal Tax Form (which reports payments made in the course of business to a person who is not an employee), as opposed to a W-2 Federal Tax Form (which reports wages paid to employees), the worker is deemed to be an independent contractor. In other situations, an employer may not attempt to formally classify a worker at all, and simply pay the worker in cash “off the books.” By engaging in these actions, employers avoid paying taxes, or making unemployment and disability contributions. Often, misclassification is discovered by the DOL after a worker who was issued a 1099 or paid “off the books” files a claim for unemployment or disability benefits with the DOL.

New Jersey has adopted a broad test to determine employment status under its Wage & Hour Law, Wage Payment Law, and Unemployment Insurance laws. New Jersey uses the “ABC test” to determine whether a worker is properly classified.⁶

This test presumes that a worker is an employee unless the employer can demonstrate all three prongs of the ABC test:

- A.** Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B.** Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- C.** Such individual is customarily engaged in an independently established trade, occupation, profession or business.

N.J.S.A. 43:21-19(i)(6)(A-C); See *Hargrove v. Sleepy’s, LLC*, 220 NJ. 289 (NJ 2014) (determining

⁶ Workers' Compensation utilizes similar criteria to determine if an individual is properly classified. Under the “right to control test,” the relationship between a business and the individual is reviewed. Employment status is found if the business retains the right to supervise the individual and control what is done as well as how it shall be done. Under the “relative nature of the work test,” employment status is found if an individual relies on income from the business and the work performed by the individual is an integral part of the activities of the business. If either or both of these tests are met, an employee/employer relationship is established for workers' compensation purposes.

that the ABC test applies to determine employment status for purposes of New Jersey Wage Payment Law *N.J.S.A. 34:11-4.1 et seq.*; and the New Jersey Wage and Hour Law, *N.J.S.A. 34:11-56a et seq.*).

The Extent of Misclassification and its Impact

Despite the broad legal requirement to properly classify workers, misclassification is widespread and especially 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.⁷ Federal studies and state-level agency audits, along with unemployment insurance and workers' compensation data, indicate that between 10 and 30 percent of employers misclassify at least one employee as an independent contractor.⁸

Misclassification can take several forms:

- Employers classify employees as “independent contractors,” even when the workers are not truly running their own businesses;
- Employers require employees to form a limited liability corporation or franchise company as a condition of getting a job; or,
- Employers pay workers “off the books,” without any payroll treatment.

In 2018, the DOL's Employer Accounts section (“DOL EA”), found that 12,315 workers were misclassified, \$462,058,602.55 in wages were underreported, and \$13,911,968.34 in contributions (unemployment, disability, family leave insurance, and workforce) were underreported.⁹ DOL EA is required to annually audit just 1% of all registered New Jersey employers, implying that the true costs of misclassification are much greater.

For workers categorized as employees, an employer must provide workers' compensation insurance, withhold federal income tax, make contributions to federal programs like Social Security and Medicare, and make contributions to state-run programs like unemployment and disability. Employees are protected by social safety net programs like Social Security, unemployment, temporary disability, earned sick leave, and family leave insurance. For independent contractors, no taxes are withheld; no benefits

7 National Employment Law Project, Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries, Sept. 2017 <https://s27147.pcdn.co/wp-content/uploads/NELP-independent-contractors-cost-2017.pdf>

8 *Ibid.*

9 These statistics are from reports obtained from DOL's audit application system.

are paid; neither unemployment nor disability contributions are made; and the employer is often not required to obtain workers' compensation insurance.

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Workers who provided testimony at the Task Force's New Brunswick Public Forum noted that they “don't have medical insurance” and that if they “have a headache” or get sick they “have to go to work because their kids won't eat.” Additionally, there exists an increased cost for independent contractors who are required to pay the full amount of their payroll tax as opposed to splitting the burden with an employer.

Employers misclassifying their employees as independent contractors neglect to pay as much as 30% of payroll and related taxes otherwise paid for employees.¹⁰ Employers who use independent contractors do not pay unemployment, which results in law-abiding employers having to pay more to make up for the shortfall in the Unemployment Trust Fund.

There is another effect of misclassification that should not be ignored. The increase in misclassification can have a direct impact on collecting child support.¹¹ In New Jersey, child support is collected through wage garnishment. *N.J.A.C. 10:110-15.2*.

When employers misclassify and pay workers in cash or via 1099, garnishing their wages can become a challenge.¹² Although New Jersey law requires that employers doing business in New Jersey report all new hires, including those classified as independent contractors, it is difficult to determine the employer for purposes of collecting child support obligations for those paid “off the books” or not registered as a new hire. *N.J.S.A. 2A:17-56.61*.

10 Independent Contractor Misclassification Imposes Huge Costs on workers and Federal and State Treasuries; <https://www.nelp.org/publication/independent-contractor-misclassification-imposes-huge-costs-on-workers-and-federal-and-state-treasuries-update-2017/>

11 Julian Aguilar, Ducking Child Support By Becoming a Contractor, The Texas Tribune, April 2, 2015.

12 Ibid.

III. Task Force

As a result of the Executive Order signed by Governor Murphy and in order to address misclassification, the Task Force held its first meeting on August 8, 2018. The members discussed the issue of misclassification, and each agency's ability to contribute to a joint enforcement effort. The Task Force discussed how state agencies can examine their policies and procedures to address misclassification and requested a point person for agency referrals, and a list of investigators.

At the second meeting on September 18, 2018, the Task Force discussed how state contracting language can be strengthened to exclude bad actors who misclassify their employees. In addition, the Task Force discussed creating a framework for referrals between state and federal agencies and also considered what other states are doing to address misclassification.

Three public forums were held to give stakeholders an opportunity to address the issue of misclassification. More than 200 people attended these hearings, and several stakeholders submitted written testimony. Of those who attended, more than 40 people testified about their experiences with misclassification, and offered suggestions on how to combat the problem. The first hearing was held at the Interstate Labor and Standards Association ("ILSA") conference in Atlantic City where several people asked questions and explained their perspective on misclassification, primarily in the construction industry. The second and third forums were held in Newark and New Brunswick, respectively, where the Task Force heard from employees, employers, subject matter experts, and other interested parties. The Task Force met a third time, in Trenton, on January 28, 2019, at which time it discussed the information gathered to date at both the public forums and prior Task Force meetings, and the recommendations stated herein.

IV. Recommendations

The Task Force aims to reduce and eliminate non-compliance and create deterrence by strengthening tools for education, enforcement, and compliance assistance.

The Task Force presents the following recommendations to combat misclassification in New Jersey and deter bad actors:

Targeted Education and Public Outreach

The DOL should create a hotline to report misclassification, a webpage, and an email address for the express purpose of public reporting on misclassification. Through the enactment of legislation discussed below, employers should be required to post notices about the practice of misclassification next to other legally required multilingual notices describing New Jersey labor laws to increase awareness and generate tips.

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In testimony submitted to the Task Force, Employers Association of New Jersey President John Sarno noted, “there is a great need to focus education initiatives on the employer community to remediate problems and to make employees whole when violations are discovered.”

The DOL should employ a press strategy that raises awareness among employers about their responsibilities and among employees of what misclassification is and how to report it to the DOL. A press strategy should describe the penalties for misclassifying workers and also emphasize that misclassification is an illegal practice that is being carefully monitored and taken seriously in New Jersey. The DOL should also publish a list of companies with unpaid judgments for failure to pay wages, failure to remit payroll taxes, or failure to provide workers’ compensation (by legislation discussed below) to notify the public that the DOL has the tools to ensure all employers comply with the law.

Strengthening State Contracting

State contracts should include language requiring employers to affirm they are aware of the laws regarding classification and that all hours worked are paid at the appropriate rate. This documentation should be shared with the DOL. In addition, language can be included in state contracts that requires

forfeiture of future state contracts and/or funding if businesses are found to misclassify. The process could be similar to the current debarment process, which prohibits companies from performing public works if they fail to pay the prevailing wage rate. *N.J.A.C. 12:60-7.2 and 12:60-7.3.*

Interagency Coordinated Enforcement

Task Force members (and all state agencies) should engage in coordinated interagency enforcement. With respect to misclassification, coordination can involve a number of different strategies. One such strategy is for agencies that conduct field visits to include on-the-ground investigations of possible misclassification. State agencies that already visit workplaces or otherwise collect information from employers can verify payroll records, which can be inaccurate or falsified regarding the number of employees, wages paid, and job duties. These interviews will help to develop an understanding of the employer's business practices, and the amount of control the company has over the worker.

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In testimony provided to the Task Force at its Newark Public Forum, former New York Commissioner of Labor and US Department of Labor Solicitor and current National Employment Law Project Senior Counsel Patricia Smith stated, “while it is not necessarily how government normally works, there is precedent for interagency coordination and it is particularly well-suited to misclassification because of multiple laws and the multiple agencies that are interested in the issue...These types of investigations generally require more than just looking at books and records. They involve talking to workers and they involve finding out what services they perform to the extent they're running their own separate business and the amount of control the agency has over them.”

While state agencies have limited resources, coordinated enforcement actions can reduce duplication of efforts in investigations. For instance, the Division of Alcoholic Beverage Control (part of the Office of the Attorney General) already reviews payroll records as part of their investigations, which can be used by DOL in investigations and/or to focus on a joint investigation.

Another strategy to address this problem is the use of joint enforcement sweeps. Joint enforcement sweeps involve a coordinated visit and inspection of a workplace by members of the Task Force. Each respective agency can use its resources to assist in a joint investigation based on their various jurisdictions, and can follow up to request records with subpoenas if necessary.

Data Sharing

In order to bolster coordinated enforcement, pertinent agencies should establish a network for interagency referrals due to misclassification and other violations to enable data sharing. All Task Force members should supply points of contact to the extent they have not done so already.

Data sharing should occur between agencies, subject to any applicable confidentiality requirements. For instance, if evidence of misclassification is found, the Division of Workers' Compensation and the Division of Taxation should be notified so the respective agencies can determine whether any additional investigation is warranted.

Data sharing can be the basis for coordinated investigations and also trigger investigations by separate agencies. Examples of this data sharing could include names of past violators, companies or industries they are currently investigating, as well as information gleaned during field investigations. Each agency can consider entering into Memoranda of Understanding with the DOL so that responsibilities and any limitations on data sharing are clearly understood by all parties.

Cooperation with Neighboring States

Many companies that operate in New Jersey also operate or are headquartered in neighboring states. In order to share information about violators who reside in neighboring states and also help with jurisdictional issues, New Jersey should engage with neighboring states to sign Memoranda of Understanding to share information, such as information on auditing practices, audit results, investigative reports, payroll records, interview statements, judgments, orders, wage collection records, and any other wage enforcement records that could assist each respective state.

Cross-Training

In order to effectively use coordinated enforcement and data sharing, cross-training between state agencies is essential. Cross-training will provide field investigators, such as those at the Division of Taxation, the New Jersey Department of Environmental Protection, the Division of Alcoholic and Beverage Control, the Department of Banking and Insurance, and others, with an understanding of the laws other agencies enforce, and also their respective powers related to same. With training on the ABC test, other agencies can identify and refer potential misclassification issues to the DOL. As a next step, participants from multiple agencies can conduct on-the-ground investigations of possible misclassification. An analysis of the facts gathered in the investigation should be performed, applying each agency's governing law to determine if there are violations. This approach mirrors cross-training

the DOL did for the Division of Consumer Affairs, where investigators in consumer fraud (which investigates registered businesses such as movers, health clubs and home improvement contractors) and board enforcement (which oversees 48 boards such as Accountancy, Dentistry, Medical Examiners, and Cosmetology) were trained in labor laws, including misclassification.

Criminal Referrals

Most labor violations are pursued in an administrative, civil proceeding. When violations rise to a certain level (where the conduct of the wrongdoers appears to be egregious), it is important to refer these cases for criminal prosecutions. Nothing sends a more powerful message to employers who break the law than the possibility of jail for mistreating workers. As such, where appropriate, referrals should be made to the Department of Law and Public Safety's Division of Criminal Justice.

Utilizing Existing Workers' Compensation Laws to Bolster Misclassification Enforcement

One of the most serious threats misclassified workers face is to their safety. In addition to not being covered by OSHA, employees who are misclassified as independent contractors are often not covered by workers' compensation. Workers' Compensation laws are designed to protect all workers, and could be used to bolster enforcement. If an employer makes a false or misleading statement, representation or submission, including misclassification of employees, for the purpose of evading the full payment of workers' compensation benefits or premiums, the employer could be charged with a fourth degree crime. N.J.S.A. 34:15-57.4 Pursuant to N.J.S.A. 34:15-79, an employer who fails to provide insurance, and who "misrepresents one or more employees as independent contractors" also faces fines of up to \$5,000 for the first 10 days of non-compliance and up to \$5,000 for every 10-day period thereafter. N.J.S.A. 34:15-79(d). Each day a worker is misclassified constitutes a separate offense. If an employer knowingly fails to provide workers' compensation insurance, the Director of the Division of Workers' Compensation can issue a stop-work order requiring the cessation of all business operations. N.J.S.A. 34:15-79(e).

Although the aforementioned laws were enacted in 2009, they have not been used to address misclassification. The Office of Special Compensation Funds (OSCF) within the Division of Workers' Compensation was created to enforce the law that requires employers to secure insurance coverage; provides temporary disability benefits and medical expenses to workers who have suffered compensable injuries while working for uninsured employers; and provides benefit payments to workers who are partially disabled, who subsequently experience a work-related injury that renders them totally disabled. Currently, Workers' Compensation has limited staff to enforce the laws that specifically address misclassification. The DOL should identify ways to bolster the OSCF.

Utilizing DOL's Power to Revoke or Suspend Licenses

In 2010, the Commissioner of Labor was given the power to suspend or revoke licenses for repeated violations of State wage, benefit and tax laws. N.J.S.A. 34:1A-1.12. Once a violation is found, the Commissioner must conduct an audit within 12 months and may order suspension of a license for a period of time if the employer or successor firm has continued in its failure to maintain or report records or pay wages. N.J.S.A. 34:1A-1.12 (b). Thereafter, the Commissioner can revoke a license permanently if continued violations are found as a result of an audit within 12 months of the second violation. N.J.S.A. 34:1A-1.12(c). The Commissioner's power to revoke or suspend licenses has never been used, and could be another tool to deter employers from not complying with labor laws. Most recently, in 2019, the DOL is in the process of finalizing a rule proposal for publication in the New Jersey register to implement the aforementioned law.

Legislative Recommendations

There are a number of potential legislative recommendations that would help State agencies combat misclassification and encourage compliance.

Requiring Employers and the DOL to Post Notification Regarding Misclassification

In order to fulfill our goal of targeted education and public outreach to workers, New Jersey should require the conspicuous posting (to go along with other required postings) in the workplace and individual distribution to workers of a notification, which: (1) announces the legal prohibition against employers misclassifying employees as independent contractors; (2) describes the legal standard applied by the DOL to determine employment status; (3) describes the statutory benefits (e.g. unemployment compensation, temporary disability benefits, and family leave insurance benefits) and legal protections (e.g. minimum wage, overtime, prohibition against illegal deductions of wages) to which employees are entitled under New Jersey law, and which the law does not afford to bona fide independent contractors; (4) explains the remedies under New Jersey law to which workers affected by misclassification may be entitled; and (5) includes the webpage, email address, and phone number created to report employer fraud. The DOL should also be required to maintain a webpage through which the same information regarding misclassification of workers should be disseminated to the general public.

The specific bill text implementing these changes would be as follows:

N.J.S.A. 34:1A-1.16 Requiring Employers to Post Notices About Misclassification

a. Each employer required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws, as defined in N.J.S.A. 34:1A-1.11, shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by the Commissioner, of (1) the legal prohibition against employers misclassifying employees as independent contractors; (2) the legal standard at N.J.S.A. 43:21-19(i)(6) applied by the Department to determine whether one is an employee or an independent contractor; (3) the statutory benefits and legal protections to which an employee is entitled under State wage, benefit and tax laws; (4) the remedies under the New Jersey Statutes to which workers affected by misclassification may be entitled; and (5) information on how a worker or a worker's authorized representative may contact, by telephone, mail and e-mail, a representative of the Commissioner to provide information to, or file a complaint with, the representative regarding possible worker misclassification.

b. No employer shall discharge or in any other manner discriminate against an employee because the employee has made an inquiry or complaint to his employer, to the Commissioner or to his authorized representative regarding possible worker misclassification, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding regarding worker misclassification under State wage, benefit and tax laws, or because the employee has testified in the proceeding.

c. Any employer who violates any provision of this section shall be guilty of a disorderly persons offense and shall, upon conviction, be fined not less than \$100 nor more than \$1,000. In the case of a discharge or other discriminatory action in violation of this section, the employer shall also be required to offer reinstatement in employment to the discharged employee and to correct any discriminatory action, and to pay the employee all reasonable legal costs of the action, all wages and benefits lost as a result of the discharge or discriminatory action, plus punitive damages equal to two times the lost wages and benefits, under penalty of contempt proceedings for failure to comply with the requirement.

N.J.S.A. 34:1A-1.17 Provision of information relative to worker misclassification

a. The Department of Labor and Workforce Development shall maintain a webpage that contains information regarding: (1) the legal prohibition against employers misclassifying employees as independent contractors; (2) the legal standard at N.J.S.A. 43:21-19(i)(6) applied by the Department to determine whether one is an employee or an independent contractor; (3) the statutory benefits and legal protections to which an employee is entitled under State wage, benefit and tax laws; (4) the remedies under the New Jersey Statutes to which workers affected by misclassification may be entitled; and (5) information on how a worker or a worker's authorized representative may contact, by telephone, mail and e-mail, a representative of the Commissioner to provide information to, or file a complaint with, the representative regarding possible worker misclassification.

Stop-Work Orders

In order to address misclassification, it would be helpful to permit the DOL to issue stop-work orders when there is an initial determination made or investigation performed where any violation is found. When repeated violations occur in the construction industry, the Commissioner can issue a stop-work order under the Construction Industry Independent Contractor Act (“CIICA”).¹³

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In testimony for the Task Force Public Forum, Richard Tolson, Director, Bricklayers & Allied Crafts New Jersey (BACNJ), noted that “Under current law, it is so difficult for the Department to obtain Stop-Work Orders for worker abuse that it barely ever occurs. By comparison, Connecticut . . . has issued more than 1,500 Stop-Work Orders in the last 10 years for worker abuse. Existing statute needs to be amended to give the Department a realistic ability to enforce the law by using Stop-Work Orders.”

In Connecticut the Labor Commissioner has the power, after finding violations, to issue a stop-work order requiring cessation of all business operations of such employer. Conn. Gen. Stat. § 31-76a.

Governor Murphy was expected to sign Assembly Bill 108/Senate Bill 2557 on July 9. The law would give the DOL the ability to immediately halt practices harming workers. The enactment of S-2557 will allow the DOL to issue stop-work orders when necessary to fight misclassification.

Access to Tax Information

In order to perform better investigations, data sharing is essential. Currently, the Division of Taxation is prohibited from sharing tax information due to the confidentiality provisions contained in N.J.S.A. 54:50-8. However, N.J.S.A. 54:50-9 gives several other state entities access to tax records, including but not limited to the Attorney General, Comptroller, State Auditor, Director of the Division of Alcoholic Beverage Control, and the Commissioner of Health. In order to obtain tax information and perform more

13 The CIICA authorizes the Commissioner to collect and assess administrative penalties. The Commissioner’s powers include: 1) the immediate suspension of a contractor’s registration if it is determined to be in the public’s best interest; 2) collecting and assessing administrative penalties up to a maximum of \$2,500 for a first misclassification violation and up to a maximum of \$5,000 for each subsequent violation; 3) for subsequent violations, the Commissioner is authorized to issue stop-work orders compelling the cessation of all business operations at every site at which a violation occurred (for second violations) or the cessation of all business operations of the violator (for third and subsequent violations).

thorough investigations, it is proposed that the following paragraph be added to N.J.S.A. 54:50-9:

(q) The furnishing by the director to the Commissioner of the Department of Labor and Workforce Development or his or her designee any and all information including but not limited to tax information statements, reports, audit files, returns, or reports of any investigation for the purpose of research, assisting in investigations pursuant to state wage, benefit and tax laws. N.J.S.A. 34:11-4.1 et seq. (Wages); N.J.S.A. 34:2-21.1 et seq. (Child Labor); N.J.S.A. 34:11-56.25 et seq. (Prevailing Wage); N.J.S.A. 34:11-56a et seq. (Wage and Hour law); N.J.S.A. 34:15-1 et seq. (Workers' Compensation); N.J.S.A. 43:21-1 et seq. (Unemployment Compensation); N.J.S.A. 43:21-25 et seq. (Temporary Disability law); N.J.S.A. 34:11D1 et seq. (Earned Sick Leave); and N.J.S.A. 43:21-39.1 et seq. (Family Temporary Disability leave).

Misclassification could be better addressed if the DOL were able to analyze tax records in the course of its investigations to compare and contrast Taxation's information with information found on the employer's records. When an employer fails to provide records, the DOL would benefit from reviewing the appropriate tax returns (i.e. 1099 forms, Schedule C of an individual's return, Corporate Business Tax, and/or Gross Income Tax Employer Withholding returns) to estimate an employer's liability for unemployment and disability contributions when misclassification is discovered.

Liability on Businesses that Engage with Businesses that Misclassify

At the public forums held by the Task Force, several misclassified independent contractors testified about how their earnings were greatly reduced by otherwise illegal deductions. For instance, truck drivers stated they were not paid for their "tension time" (the time spent waiting to receive their shipment), which would be paid if they were considered employees. In addition, many workers explained their employer deducted money from their paychecks for services connected to their work (repairs to their truck, gas, and other reasons) that would be illegal if they were employees.

In order to deter establishments from engaging with businesses that misclassify or commit other violations, New Jersey should require the DOL to maintain a public list of businesses with unpaid final judgments for failure to pay wages, failure to remit payroll taxes, or failure to provide workers' compensation insurance. Toward this end, New Jersey should enact a bill modelled after Section 2810.4 of the California Labor Code, which holds retailers accountable for a trucking company's violations if they are on the published list of carriers that violate California labor laws. Cal Labor Code § 2810.4.

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At the Newark Public Forum, Mike DiVirgilio, Vice President, Transportation, Toll Global Logistics, offered testimony in support of this legislation, stating, “In California, Bill S.1402 established joint liability for customers who contract with or use carriers who have unpaid wages and workers’ compensation. The state has already published a list of carriers, which has had a significant deterrent effect. This legislation is something that the governor and the state Legislature might want to consider.”

New Jersey should broaden this legislation to impose joint and several liability on entities that work with other organizations that have unpaid final judgments for failure to pay wages, failure to remit payroll taxes, or failure to provide workers' compensation insurance, and, as mentioned above, include a requirement that the DOL maintain a public list of these offenders. This list could serve two purposes: 1) to deter companies from failing to comply with the law; and 2) to encourage responsible business practices. If businesses work with violators on the list, they could be held jointly and severally liable for unpaid wages, unreimbursed expenses, damages, and penalties, including applicable interest, after the date the business appeared on the list of violators.

Liability imposed on business owners and successor entities that misclassify

In order to deter employers from misclassifying, legislation should be introduced to impose liability on individual business owners found to violate labor and wage and hour laws, and could be modeled after California Labor Code Section 558.1. Under this statute, a company’s owners, directors, officers, and even managing agents may be held personally liable for wage and hour violations. If owners were found individually liable, businesses may be deterred from the economic advantages misclassification can provide.

The DOL frequently sees repeat offenders who avoid liability by creating a new business entity after the former business was found to have misclassified its workers, or violated other laws. In order to close this loophole, owners should be able to be found individually liable so they can not create a new business entity to avoid liability.

Businesses found to misclassify should fund the investigatory costs and attorney's fees

Legislation should be enacted that provides that the costs incurred during the investigatory process

will be levied against an employer found liable for misclassification, including any legal fees incurred. This could be accomplished a number of ways – if misclassification is found, an additional fee could be assessed for costs incurred for each investigation, and the fees could increase for subsequent violations. Alternatively, fees could be assessed as a percentage of the liability (i.e.: 10% for first violation, 15% for second, and 20% for third).

If the aforementioned proposal is enacted, there would be several benefits. First, the DOL would be able to recoup some or all of the costs of investigation. Second, this proposal would deter future violations since the fees would increase with each subsequent violation. Finally, this proposal would encourage compliance due to the increased fees if misclassification is discovered.

Increasing Fines and Penalties

The DOL's audits and investigations would have a larger impact if fines were increased. The applicable laws could be amended to include a set of misclassification-specific penalties fining employers up to \$5,000 per misclassified worker with the included option of higher assessments for repeated violations. The maximum fines could be increased from \$1,000 to \$5,000, and \$10,000 for a second violation, by amending language in the Wage Payment Law (*N.J.S.A. 34:11-4.10*) and Wage and Hour Law (*N.J.S.A. 34:11-56a-22*) to raise the penalties for all violations.

In addition, penalties for recordkeeping violations should be increased. Non-construction misclassification violations are typically cited as recordkeeping violations, and increasing fines for these type of violations may be an effective means of deterring misclassification. The penalties contained in *N.J.S.A. 34:11-56a-22* should be increased from a maximum of \$250 to not more than \$1,000 for the first violation and from \$500 to not more than \$5,000 for the second.

IV. Conclusion

By understanding how misclassification functions and implementing innovative policy changes on a variety of different fronts, New Jersey can lead the charge in protecting its workers, taxpayers, and employers. The State should engage in a public outreach effort to raise public awareness and create a webpage and hotline to report misclassification. In addition, state contracting should be strengthened to ensure those that contract with the state or receive public funds are compliant with the law and properly classify their workers. Agencies should engage in coordinated enforcement and data sharing to better use state resources. State field investigators should be cross-trained so they can assist in addressing misclassification. In addition, any strategy aimed at combating misclassification should include referrals to the Division of Criminal Justice where appropriate. Finally, a number of legislative proposals can help to address the issue. A multifaceted approach will create deterrence and encourage compliance to address the widespread problem of misclassification.

Appendix

MOU with DOL: www.DOL.gov/whd/workers/MOU/nj.pdf

Letter to Accountants

MEMORANDUM OF COOPERATION BETWEEN
THE U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
AND
THE NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

This Agreement is made and entered into by and between the United States Department of Labor's Wage and Hour Division (DOL/WHD), and the New Jersey Department of Labor and Workforce Development (NJDLWD), together collectively referred to as "the Agencies" or "the parties."

With the specific and mutual goals of providing clear, accurate and easy-to-access outreach to employers, employees and other stakeholders, and of sharing resources and enhancing enforcement by conducting coordinated investigations and sharing information consistent with applicable law, the parties agree to enter into this partnership.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The Agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the State of New Jersey. The Agencies are forming this partnership to more effectively and efficiently communicate and cooperate in areas of common interest, to share training materials, to provide employers and employees with compliance assistance information, to conduct coordinated investigations and share information, as appropriate.

This agreement is intended to memorialize this understanding between DOL/WHD, and NJDLWD. This agreement is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and NJDLWD, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This agreement outlines procedures to be followed by DOL/WHD, and NJDLWD in working together to address the need for information sharing, coordinated investigations, cross training staff, and outreach between DOL/WHD and NJDLWD.

Agencies

DOL/WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this agreement limits the DOL/WHD's enforcement of these and other statutes.

The NJDLWD is an agency of the State of New Jersey, created in accordance with N.J.S.A. 34:1A-1, et seq. The NJDLWD has various divisions and sections that may be relevant here. Among them, are the following:

Division of Wage and Hour Compliance (WHC)

WHC is responsible for enforcement of the New Jersey Wage and Hour Law (N.J.S.A. 34:11-56a, et seq.), the New Jersey Wage Payment Law (N.J.S.A. 34:11-4, et seq.), the New Jersey Prevailing Wage Act (N.J.S.A. 34:11-56.25, et seq.), the New Jersey Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48, et seq.), the State law requiring payment of a prevailing wage for building services (N.J.S.A. 34:11-56.48), the New Jersey Construction Industry Independent Contractor Act (N.J.S.A. 34:34-20-1 et seq.), the State law requiring payment of a prevailing wage and safety training for contractors engaged in construction work on a public utility (N.J.S.A. 34:13B-2.1), the New Jersey Child Labor law (N.J.S.A. 34:2-21.1, et seq.), the New Jersey Industrial Home Work law (N.J.S.A. 34:6-120, et seq.), the State law requiring notification of changes to or termination of employer-sponsored health benefit plans (N.J.S.A. 34:11A-16, et seq.), the State law prohibiting discrimination against unemployed individuals (N.J.S.A. 34:8B-1 et seq.), and the New Jersey Opportunity to Compete Act (N.J.S.A. 34:6B-11 et seq.), among other laws.

Division of Public Safety and Occupational Safety and Health (OSH)

OSH is responsible for enforcement of the New Jersey Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq.), the New Jersey Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.), the New Jersey Licensing of Crane Operators Act (N.J.S.A. 45:26-1 et seq.), the New Jersey Operating Engineers and Firemen Licensing Act (N.J.S.A. 34:7-1 et seq.), the New Jersey Mine Safety Act (N.J.S.A. 34:6-98.1 et seq.), and the New Jersey Explosives Act (N.J.S.A. 21:1A-128 et seq.), among other laws.

Division of Unemployment Insurance (UI)

UI is responsible for administration of the State's unemployment compensation system pursuant to the New Jersey Unemployment Compensation Law (N.J.S.A. 43:21-1 et seq.).

Division of Employer Accounts (EA)

EA is responsible for the collection of contributions to the Unemployment Compensation Fund and State Disability Benefits Fund pursuant to the New Jersey Unemployment Compensation Law (N.J.S.A. 43:21-1 et seq.) and the New Jersey Temporary Disability Benefits Law (N.J.S.A. 43:21-25 et seq.).

Contacts

- The Agencies will designate a contact person responsible for coordinating the partnership activities.
- The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
- The Agencies will designate a representative to meet routinely to review areas of mutual concern and terms and conditions of the partnership.

Enforcement

Where appropriate and to the extent permitted by law:

1. The Agencies may conduct coordinated investigations in the State of New Jersey.
2. The Agencies may coordinate their respective enforcement activities and assist each other with enforcement.
3. The Agencies may make referrals of potential violations of each other's statutes.

Effect of Agreement

1. This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates the parties to expend appropriations or enter into any contract or other obligation.
2. By entering into this partnership, the Agencies do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.
3. Nothing in this Agreement is intended to diminish or otherwise affect the authority of either Agency to implement its respective statutory functions.
4. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this

Agreement shall be deemed to exist or be binding upon the parties. This Agreement is not intended to confer any right upon any private person or third party.

5. Nothing in this Agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations. This Agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
6. This Agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, New Jersey Public Records Act, and any other applicable federal and New Jersey laws.

Exchange on Information

1. It is the policy of DOL/WHd and NJDLWD to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with the DOL/WHd's and NJDLWD's statutory obligations and enforcement efforts. It is the view of DOL/WHd and NJDLWD that an exchange of information in cases in which both Agencies are proceeding on similar matters is to the Agencies' mutual benefit. There is a need for DOL/WHd and NJDLWD to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or otherwise making a public disclosure.
2. Exchange of such information pursuant to this Agreement is not a public disclosure under either the Freedom of Information Act, 5 U.S.C. §552, or the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.
3. "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes or law. Confidential information includes: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in the Agencies' enforcement files that were obtained under these conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information on living persons; individually identifiable health information; and confidential business information and trade secrets.

4. "Confidential Unemployment Compensation Information," as defined in 20 C.F.R. §603.2(b), means any unemployment compensation information, as defined in 20 C.F.R. §603.2(j), required to be kept confidential under 20 C.F.R. §603.4 or its successor law or regulations.
5. When Confidential Information is exchanged it shall be accessed and used for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or redisclosed without the express written permission of the Agency providing the information (hereinafter the "Donor Agency"), a final court order or as required by law, including the Freedom of Information Act and the New Jersey Open Public Records Act. Upon receipt of a public disclosure request, NJDLWD agrees to provide DOL/WHd with notice of the request and an opportunity to pursue legal action to prevent the release of information.
6. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
7. No party shall have authority to waive any applicable privilege or doctrine on behalf of any other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to any other party.
8. The agencies will notify one another, through the agency point of contact identified in this agreement, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this agreement.
9. In addition to the requirements above, Confidential Unemployment Compensation Information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4 and the applicable New Jersey laws, including, but not limited to, N.J.S.A. 43:21-11(g).

10. In the event that there is a public proceeding, such as a trial in which Confidential Information may be used and/or testimony of DOL/WHd's employees sought, the DOL/WHd requires that NJDLWD, as appropriate, notify DOL/WHd. In the event there is a public proceeding, such as a trial, in which Confidential Information may be used and/or testimony of NJDLWD's employees sought, NJDLWD requires that DOL/WHd, as appropriate, notify NJDLWD.
11. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this Agreement remains the responsibility of the Donor Agency while in transit. The Agencies agree to establish a communication protocol for notifying each Agency's designated contact person when information is sent to or received from that Agency, including information on the form of the transfer and the media type and quantity (when appropriate). An Agency expecting to receive information will notify the Donor Agency if the information is not received as of the next business date following the agreed upon delivery date.
12. For information security purposes, after an Agency receives information from the Donor Agency, the Donor Agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
13. However, in the event that the Agency receiving information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this Agreement, the Agency experiencing the incident or disaster will send formal written notification to the Donor Agency's designated contact person within three days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this Agreement may have been inadvertently disclosed.

Subject to the foregoing constraints:

1. The Agencies agree to exchange information on laws and regulations of common concern to the Agencies, to the extent practicable.
2. The Agencies will establish a methodology for exchanging investigative leads, complaints and referrals of possible violations, to the extent allowable by law and policy.

3. The Agencies will exchange information (statistical data) on the incidence of violations in specific industries and geographical areas, if possible.
4. Liability of the U.S. Government is governed by the Federal Torts Claims Act and Liability of the State of New Jersey is governed by the New Jersey Tort Claims Act.

Outreach and Education

1. When appropriate and feasible, the Agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications of common concern for the regulated community.
2. The Agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate. Any such dissemination may not be undertaken without prior notice of each party.
3. All public materials bearing the United States Department of Labor (“USDOL”) or DOL/WHd name, logo, or seal must be approved in advance by USDOL. All public material bearing the NJDLWD name, logo, or seal must be approved in advance by the NJDLWD. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the Agreement shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner.

Resolution of Disagreements

Any disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each Agency.

Period of Agreement

This Agreement becomes effective upon the signing by the parties, and will expire three years from the effective date. This Agreement may be modified in writing by mutual consent of the parties. The Agreement may be cancelled by any party by giving thirty (30) days advance written notice prior to the date of cancellation. Renewal of the Agreement may be accomplished by written Agreement of the parties.

Provisions relating to the confidentiality and handling of information exchanged pursuant to this Agreement shall survive the termination of this Agreement.

This Agreement is effective this 10th day of August, 2018

United States Department of Labor
DOL/Wage and Hour Division

By: 

Mark H. Watson Jr.
Northeast Regional Administrator

New Jersey Department of Labor and
Workforce Development

By: 

Robert Asaro-Angelo
Commissioner



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lieutenant Governor

State of New Jersey
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. Box 110
TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

Dear Licensee:

As you know, one of our many responsibilities at the Department of Labor and Workforce Development (NJDOL) is the collection of contributions due from employers to the unemployment compensation and State disability benefits funds under N.J.S.A. 43:21-7. In carrying out this responsibility we have seen a number of cases where small and medium sized employers believe that by simply making the decision to report a worker's earnings to the federal government using Form 1099, as opposed to Form W-2, a potential employer may unilaterally deem that individual to be an independent contractor, thereby avoiding the responsibility under N.J.S.A. 43:21-7 to make contributions respecting that individual to the unemployment compensation and State disability benefits funds.

On behalf of the Department of Labor and the Division of Consumer Affairs, we are writing to remind you that under N.J.S.A. 43:21-1 et seq., the New Jersey Unemployment Compensation Law (NJUCL), if a service is performed for remuneration or under any contract of hire, written or oral, express or implied, it is considered to be covered employment, unless the potential employer is able to establish the following with regard to the service at issue and the individual providing that service:

- (A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and
- (B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- (C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

N.J.S.A. 43:21-19(i)(6).

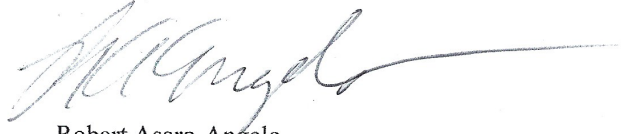
This statutory criteria, commonly referred to as the "ABC test," is written in the conjunctive. Therefore, where a putative employer fails to meet any one of the three criteria listed above with regard to an individual who has performed a service for remuneration, that individual is considered to be an employee and the service performed is considered to be employment subject to the requirements of the NJUCL; in particular, subject to N.J.S.A. 43:21-7, which requires an employer to make contributions to the unemployment compensation fund and the State disability benefits fund with respect to its employees.

As alluded to earlier, in support of independent contractor status, potential employers all too often assert that the individual is engaged in "1099 work," is a "1099 employee," works in a "1099 job," or is "paid with a 1099." These assertions come with the related inference that by simply making the decision to report a worker's earnings to the federal government using a particular form, a potential employer may unilaterally deem that individual to be an independent contractor. Again, it is our intention through this letter to remind you in the strongest possible terms that in New Jersey whether someone is considered an independent contractor, as opposed to an employee, is governed by the "ABC test," not by whether the putative employer is using a Form 1099 to report a worker's earnings to the federal government.

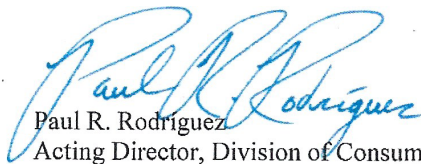
We would respectfully request in the new year and beyond that as a professional, licensed by the Board of Accountancy under the New Jersey Accountancy Law, N.J.S.A. 45:2B-42 et seq., the purpose of which is to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial performance of commercial and non-commercial enterprises, you keep the foregoing in mind as you meet with business clients who are inquiring as to the appropriate classification of their workers, whether as part of an initial business model design, a tax/financial evaluation of an existing business, or simply in providing assistance to business clients in the filing of quarterly wage and contribution reports.

Should you have any questions related to misclassification, please call the Department of Labor at 609-292-2321. We thank you for your time and your attention to this important issue.

Sincerely,



Robert Asaro-Angelo
Commissioner



Paul R. Rodriguez
Acting Director, Division of Consumer Affairs