

JOINT ENFORCEMENT TASK FORCE ON
**PAYROLL FRAUD AND
WORKER MISCLASSIFICATION
REPORT**

2021



STATE OF WISCONSIN
**DWD**
Department of Workforce Development

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When a business cheats,
Wisconsin loses.

*Worker misclassification is cheating,
and cheaters shouldn't win.*

INTRODUCTION AND BACKGROUND SUMMARY

On April 15, 2019, Governor Tony Evers signed 2019 Executive Order # 20 (attached as Appendix 1), creating the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification. Governor Evers recognized that worker misclassification not only denies vulnerable workers various labor protections, worker's compensation, and unemployment benefits, but results in millions of dollars in losses to state government and taxpayers due to the underpayment of wages, unemployment insurance contributions, worker's compensation insurance premiums, and payroll taxes. Executive Order # 20 created the Task Force and charged the members with evaluating existing laws and practices to determine ways to enhance enforcement mechanisms currently used to combat worker misclassification; facilitate information sharing and investigative resources between agencies; and work cooperatively with business, labor, and community groups to raise public awareness and prevent worker misclassification through the further dissemination of educational materials and other resources.

Task Force Membership

The Task Force consists of the following members:

- ▶ Danielle Williams (Task Force Chair), Assistant Deputy Secretary, Department of Workforce Development (DWD)
- ▶ Michael Morris, Assistant Attorney General, Department of Justice
- ▶ Maria Guerra Lapacek, Assistant Deputy Secretary, Department of Revenue
- ▶ Nathan Houdek, Deputy Commissioner of Insurance, Office of the Commissioner of Insurance
- ▶ Steve Peters, Administrator, DWD, Worker's Compensation Division
- ▶ Mark Reihl, Administrator, DWD, Unemployment Insurance Division
- ▶ Jesús Villa, Administrator, DWD, Equal Rights Division
- ▶ Dale Kooyenga, Wisconsin State Senator, District 5
- ▶ Dave Hansen, Wisconsin State Senator, District 30 (Resigned December 2020)
- ▶ Robert Wirch, Wisconsin State Senator, District 22 (Effective December 2020)
- ▶ Representative Rob Brooks, Wisconsin State Representative, District 60
- ▶ Christine Sinicki, Wisconsin State Representative, District 20
- ▶ Pete Braun, Founder, President and CEO, Wall-Tech
- ▶ Cynthia Buchko, General Counsel, Construction Business Group
- ▶ Andy Buck, Government Affairs Director, Painters and Allied Trades District Council 7
- ▶ Tim DeMinter, Business Manager, Financial Secretary/Treasurer, Ironworkers Local 383
- ▶ Gary Rockweiler, Vice President and CEO, Rockweiler Insulation Inc.
- ▶ Jerry Shea, President, Market and Johnson
- ▶ Steuart Wilson, Business Representative, Local Union #18 Of the International Association of The Sheet Metal Air Rail and Transportation Workers

ACTIVITIES OF THE JOINT ENFORCEMENT TASK FORCE ON PAYROLL FRAUD AND WORKER MISCLASSIFICATION

The Task Force issued its 2019-2020 report in March 2020 just days before a state and national public health emergency was declared due to the COVID-19 pandemic. The Report included five recommendations, as well as several potential topics for further discussion and study by the Task Force in 2020.

Governor Evers offered his support for the recommendations. He directed the Department of Workforce Development and Department of Revenue to lead efforts to implement the recommendations regarding education and outreach and interagency investigations within the confines of existing statutory and budget authority. (More information on these efforts are described later in this report.) He also included the following relevant provisions in his 2021-23 Executive Biennial Budget, which he released on February 16, 2021:

1. Three new unemployment insurance field auditors to investigate misclassification.
2. Re-creation of the Construction Contractor Registration program at the Department of Safety and Professional Service to require individuals and businesses, listed as contractors, to be registered before performing services for customers.
3. Creation of an escalating penalty structure for repeat violations of worker's compensation and unemployment insurance laws around worker classification, an escalating administrative penalty for repeat offenders, and continued referral for criminal prosecution for subsequent violations.
4. Requirement that the Department of Workforce Development develop and make available to employers and on its website information regarding worker classification laws, requirements, and penalties for noncompliance.
5. Requirement that outreach and education regarding worker misclassification be provided to certain entities as follows: (a) the Department of Administration must coordinate with state agencies to conduct outreach to entities that serve vulnerable populations; (b) the Office of the Commissioner of Insurance must conduct outreach and provide education, at least annually, to insurers and other relevant entities; and (c) the Department of Financial Institutions must provide informational materials and resources on worker misclassification with new business registrations. Such outreach must include information regarding the rules, requirements, reporting procedures and penalties surrounding worker misclassification.

The Task Force re-convened in October 2020 for its first meeting since issuing its report and recommendations. Governor Evers kicked off the meeting by thanking the members of the Task Force for their work and the recommendations they developed the previous year, and charged the group to continue its efforts to examine and develop approaches to combat payroll fraud and worker misclassification. To that end, the Task Force identified two priorities to focus on when developing their recommendations for the 2020-2021 report. One priority the Task Force identified was the need to address worker's compensation premium fraud and avoidance. The other priority was developing methods to hold higher tier contractors accountable if their subcontractors misclassify workers, which is an enforcement tactic utilized by other states referred to as upstream contractor liability.

Members of the Task Force created work groups to examine those issues and enlisted other subject matter experts to participate in the work groups, share their experience, and provide additional input. The work groups met several times to develop recommendations for their respective areas and reached agreements on multiple recommended actions to present to the Task Force for consideration. While the work groups researched their specific issues, the Task Force met again in December 2020, and in January and February 2021. At each Task Force meeting, members heard status reports regarding activities related to the recommendations included in the 2019-2020 report, as well as the progress of the new work groups.

At the December 10, 2020 meeting, Task Force members discussed how state government could help educate employers on the rules, requirements, and penalties associated with worker misclassification. To enhance the discussion, Patti Epstein, Division of Corporate and Consumer Services Administrator at the Department of Financial Institutions (DFI), presented on DFI's role in registering new business entities so the Task Force could consider how DFI may help distribute informational materials to stakeholders to help prevent potential violations. In addition, Cindy Buchko, General Counsel at the Construction Business Group (CBG), led a discussion of how CBG's insurance fraud investigators often uncover instances of illegal labor trafficking by labor brokers. These labor brokers take advantage of vulnerable workers by taking or withholding paychecks, paying unfair wages, paying in cash, instructing workers to lie about on-the-job injuries, and other illegal and unsavory practices that victimize hard working people and cost the taxpayers by lost payroll taxes and increased medical expenses.

To gain additional insight on how the practice of worker misclassification is directly affecting individuals in Wisconsin, the Task Force invited the public to comment at the January 25, 2021 meeting and to share how worker classification issues have impacted their job, business, or workplace. Members of the public were also invited to submit written comments to DWD prior to the meeting through a dedicated email box. Three people provided verbal comments at the meeting and two additional people provided written comments, which were compiled and presented to the Task Force members at the February 11, 2021 meeting. The information from these public comments highlighted the need for a fair, equitable, and enforceable system of worker classification. The comments provide examples of companies and contractors who are put at a competitive disadvantage when they follow the rules designed to provide worker protections and those who do not follow the rules are neither stopped nor held accountable. Most of the comments were related to worker misclassification in general but one of the public comments highlighted the concerns that were unique to aspects of the trucking industry.

Following the public comment portion of the meeting, Frank Manzo of the Midwest Economic Policy Institute presented the Institute's research of the economic impact of worker misclassification, payroll fraud, and wage theft in the construction industries on workers and taxpayers in Wisconsin, Illinois and Minnesota. Additional discussion of this report is provided in the next section.

Following months of research, analysis, and consideration, the two work groups presented their recommended action items to the Task Force at the February 11, 2021 meeting for inclusion in the 2021 report. After lengthy discussion and debate, the Task Force agreed upon the recommendations contained in this report.

THE EXTENT AND COSTS OF MISCLASSIFICATION AND RECOVERY EFFORTS

The world-wide pandemic provided a stark and focused picture of the importance of the Task Force's work over the previous year. An unprecedented number of workers were forced to rely on the unemployment insurance safety net and other worker protections regardless of whether they were an employee or an independent contractor. Hundreds of thousands of workers had to claim unemployment benefits when they were laid off, while others had to claim family medical leave protections in order to stay home to care for family members. Short-term solutions were offered through state and federal aid programs; however, the importance of proper employee classification is clearer now than ever before.

In 2020, Wisconsin Unemployment Insurance (UI) Division auditors conducted 1,269 audits and identified 8,925 misclassified workers. Due to the Division of Unemployment Insurance's efforts to detect worker misclassification, \$2.34 million was generated in UI taxes and interest. This was an increase over 2019, despite the unique challenges of the pandemic. Worksite investigations were conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. Although hampered by the effects of the pandemic, the division conducted 244 worker classification field investigations in 2020. In addition, investigative team members continue to present at construction industry events and meetings with organizations representing workers, labor union meetings, community organizations representing workers, and other public forums on worker classification.

The importance of proper employee classification was demonstrated further in a research study released by the Midwest Economic Policy Institute (MEPI) in January 2021 that addressed the costs of worker misclassification, payroll fraud and wage theft. In the research study, MEPI acknowledged that "quantifying worker misclassification is difficult because unscrupulous employers attempt to conceal their fraud, employees may not know they are being considered independent contractors, and state governments have limited resources to monitor, investigate, and take punitive action against offenders. Despite these limitations, academic researchers have found that payroll fraud and wage theft are rampant in construction markets across the United States."

Using a variety of economic, wage, and employment data, including unemployment wage data and other data from the Bureau of Labor Statistics, and applying a generally accepted comprehensive research methodology, the MEPI found that over 14,500 construction workers in Wisconsin are paid off the books or misclassified annually, accounting for 10 percent of the workforce. MEPI also found that misclassified workers lose access to basic labor protections, including minimum wage, overtime pay, unemployment insurance, and worker's compensation insurance.

As a result, in Wisconsin, illegally employed construction workers earn 31 percent less (\$23,500 annually) in combined wages and fringe benefits. The study also found that unscrupulous contractors who misclassify workers or illegally pay their employees in cash commit payroll fraud that costs taxpayers millions of dollars per year. According to the study, Wisconsin annually loses \$40 million in state tax revenues due to construction payroll fraud— including \$8 million in income taxes, \$6 million in unemployment insurance contributions, and \$26 million in worker's compensation premiums.¹

¹ The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois Impacts on Workers and Taxpayers, January 14, 2021, Midwest Economic Policy Institute.

<https://midwestepi.files.wordpress.com/2020/10/mepi-ilepi-costs-of-payroll-fraud-in-wi-mn-il-final.pdf>

SUMMARY OF NEW EDUCATION AND OUTREACH ACTIVITIES

Jesús Villa, Administrator of DWD's Equal Rights Division, leads the Department's efforts to implement the Task Force's recommendation to "undertake an aggressive campaign to educate employers, employees, independent contractors, and the general public about misclassification issues." While the launch of the education campaign was delayed due to shifting priorities caused by the COVID-19 health emergency, the education and outreach committee was able to achieve the following:

- ▶ Identified key messaging points for more aggressively highlighting the harms of misclassification and Wisconsin's commitment to end the practice and hold violators accountable,
- ▶ Updated the Employee Misclassification website with the new messaging,
- ▶ Developed a one page "flyer" with the new messaging that could be used by state agencies and other stakeholders for communication; and
- ▶ Developed an informational poster that can be displayed physically at worksites or accessed virtually on DWD's eWorkBoard.

The plan for the education campaign in 2021 includes the following activities:

- ▶ Work with the Department of Financial Institutions (DFI) to include informational materials and resources on worker misclassification with new business registrations.
- ▶ Support the Office of the Commissioner of Insurance (OCI) efforts to educate insurance professionals on misclassification issues so they can identify potential violations and report them to the appropriate agency.
- ▶ Develop a communication plan that engages key State agencies and stakeholders in disseminating educational information on the harms of worker misclassification and how the State is addressing it (including coordinated messaging around the Labor Day holiday).
- ▶ Drive efforts to require the display of the misclassification worksite poster.
- ▶ Translate the poster and other informational materials into Spanish and other key languages to maximize outreach to vulnerable populations.
- ▶ Investigate the ability to produce and buy media time for public service announcements around the Labor Day education campaign to reach additional workers.
- ▶ Conduct a survey to better understand public attitudes toward worker misclassification and understanding of what state resources are available to help combat misclassification. The data from the survey will be used to help shape the educational campaign and evaluate its effectiveness.

Why is misclassification bad?

Misclassified employees are often denied access to critical benefits and protections they are entitled to by law.



SUMMARY OF THE INTERAGENCY COORDINATED ENFORCEMENT EFFORTS

Maria Guerra Lapacek, Assistant Deputy Secretary, Department of Revenue leads the team working to enact the Task Force's recommendation to "create an Interagency Coordinated Enforcement Team" (IACET) consisting of the Departments of Workforce Development (DWD), Revenue (DOR), Justice (DOJ) and Financial Institutions and the Office of the Commissioner of Insurance to address interagency coordination and data sharing improvements to the extent permitted by law."

The IACET has met regularly to discuss ways to collaborate more fully on payroll fraud and misclassification issues. The initial meetings provided an opportunity for each department to describe their role and bounds of authority in enforcement of payroll fraud and misclassification, including examples, the reports they create, and the data that is kept regarding their enforcement activities. Future conversations will explore areas where more collaboration would assist in enforcement efforts.

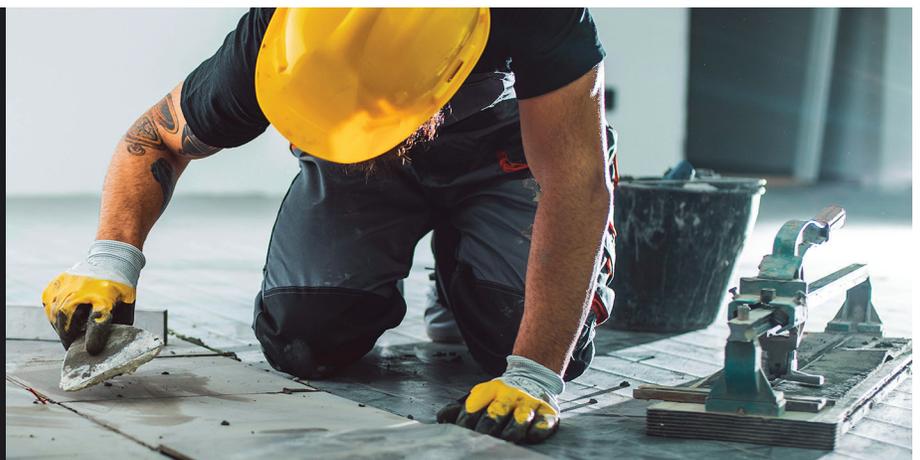
Additionally, there are a few areas where statutory changes could assist in either more strongly deterring the illegal behavior, heightening penalties, or more quickly shutting it down.

The IACET plans for 2021 include the following:

- ▶ Explore opportunities and methods to transfer data electronically between DOR and DWD to allow data analytics to assist in making audit selections. DWD and DOR strengthened data-sharing agreements to share data on businesses engaged in misclassifying workers to allow for data transfers from DWD to DOR. In the immediate term, data sharing will be a manual transfer of information, but the goal is to transfer data electronically for purposes of audit selections using data analytics.
- ▶ Make recommendations on process and law changes to strengthen our ability to identify and prosecute bad actors.
- ▶ Explore opportunities to bring the DOJ prosecutors in at an earlier stage in investigations in order to allow them to be more involved in the investigation and process.
- ▶ Look more closely at insurance fraud, and further explore how to work with DWD's Worker's Compensation Division, and have data shared by insurance providers to allow the results of insurance company audits to be reported to DWD.

What is Worker Misclassification?

It is the unlawful practice of labeling employees as independent contractors. Misclassification is cheating because it allows employers to avoid paying benefits (health and retirement), liability insurance, unemployment insurance, and withhold taxes.



RECOMMENDATIONS

Worker misclassification is a nation-wide problem and each state's approach to solving it may be different based on what methods are best suited for that state. The Task Force created two sub-work groups that heard from subject matter experts and stakeholders regarding the efforts of other states to combat worker misclassification and payroll fraud.

The Worker's Compensation Premium Fraud and Avoidance Work Group focused on ensuring that workers had adequate coverage in the case of a workplace injury and that all employers were held to the standard of appropriate classification and categorization, thus leveling the playing field with employers who follow the law. This work group included a representative of the National Insurance Crime Bureau (NICB), a nationwide organization that has collaboration and cooperation with more than 40 states; however, Wisconsin is one of a handful of states that do not currently report to the NICB. The NICB provides an electronic means for the reporting, tracking, and investigation of insurance fraud. The January 2021 MEPI study provided a quantifiable dollar amount lost due to worker misclassification and payroll fraud and the work group recognized that employers who properly classify or categorize workers pay more in premiums than those that skirt the law through fraud or avoidance. This unscrupulous practice places the law-abiding, responsible employers at a disadvantage and potentially leaves workers uninsured and unprotected.

To combat this unlawful behavior, the work group came up with four recommendations designed to collect information, protect workers, increase compliance, and level the playing field, and brought these recommendations to the Task Force. The Task Force adopted those four recommendations without any dissent. They are included in this report below as Recommendations 1-4.

The Upstream Liability Work Group's goal was to make sure all the stakeholders (e.g., contractors, general contractors, construction managers, and developers) are educated on the importance of properly classifying workers and are held accountable when workers are being misclassified. One option discussed by the work group was creating a mechanism to serve as a financial incentive for contractors to ensure their subcontractors are properly classifying employees, and providing those employees with access to unemployment insurance, worker's compensation insurance, and the appropriate employment rights and labor standards.

The group examined a law in Pennsylvania that requires contractors to comply with classification and labor standards laws, authorizes and provides resources to a state agency to investigate compliance without the need to receive a complaint first, and requires public reporting of all employers fined under this law.² In 2019 alone, the state of Pennsylvania investigated 192 cases, conducted 370 on-site investigations, and 229 administrative penalties that totaled \$531,874.³

The work group also examined laws that require upstream liability for contractors. One such law passed in California, effective January 1, 2018, provides that a direct contractor, as defined, making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other work, to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. In addition, the law requires a subcontractor, upon request from the direct contractor, to provide

² The Construction Workplace Misclassification Act, 43 P.S. §§ 933.1– 933.17 (Act 72 or Act), went into effect on February 10, 2011.

³ Administration and Enforcement of the Construction Workplace Misclassification Act, March 1, 2020 Annual Report.

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/lc/act72/Documents/2019%20Act%2072%20Report-final.pdf>

specified information regarding the subcontractor's and third party's work on the project and would provide that the direct contractor could withhold disputed sums upon the subcontractor's failure to provide the requested information.⁴

Based upon this research and extensive discussion among subject matter experts and stakeholder, the group made three recommendations to the Task Force. The Task Force adopted two recommendations (#5 and #7 below) without dissent and modified one recommendation (#6 below), with one dissenting vote (Jerry Shea), to allow for more investigation into the options for contractor upstream liability and joint liability.

The Task Force makes the following recommendations:

- 1. Amend Wis. Stat. § 102.125 to clarify that application and premium fraud is covered. Amend the criminal code, Wis. Stat. Chapter 943 to specifically include premium fraud as part of the insurance fraud definition.**

Explanation:

Currently, Wis. Stat. § 102.125(1) requires that worker's compensation (WC) claimant fraud be reported to the Department of Workforce Development (DWD), but the subsection makes no reference to premium or application fraud. While Wis. Stat. §§ 102.125(2) and (3) appear to allow for WC application and premium fraud investigations by DWD and DOJ, and prosecution by DOJ or a District Attorney upon referral by DWD, there have been no premium or application fraud referrals or prosecutions to date. This is in large part because such fraud is not generally reported to DWD. The recommendation is to amend Wis. Stat. §102.125 and any applicable criminal statutes in Wis. Stat. Ch. 943 to make it clear that premium and application fraud—not just claimant fraud—should be reported, investigated, and prosecuted.

- 2. Amend Wis. Stat. § 102.125 to create a statutory requirement for insurers and self-insured employers to report worker's compensation premium and application fraud to the Department of Workforce Development. Encourage the Task Force to explore mandatory reporting of all insurance fraud and collaboration with NICB.**

Explanation:

Currently, only WC claimant fraud must be reported to DWD under Wis. Stat. § 102.125(1). Amending Wis. Stat. § 102.125 to apply to WC premium and application fraud, as set forth in the preceding recommendation, should also require mandatory reporting of premium and application fraud to DWD.

While this work group's focus was narrowly defined to WC insurance, the work group necessarily discussed the broader impact of misclassification and payroll fraud on the insurance industry as a whole. Other states have mandatory insurer reporting of all suspected insurance fraud which allows state agencies to analyze data, define and quantify the illegal behavior patterns by industry, and focus education and enforcement resources where they are most needed. NICB has been the repository for reporting in other states and has the capability to collect and report the data to all affected state agencies. Such data could also be aggregated and made public for the education of all stakeholders.

⁴ Assembly Bill 2701, Chapter 804, creating sec. 218.7.
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1701

- 3. Create a statutory Insurance Fraud Bureau of Investigations, targeting not only claim fraud but also premium and application fraud, with adequate resources to investigate and prosecute fraud. The bureau would be accountable for reporting its activities with other relevant agencies, the legislature, and the governor.**

Explanation:

Curbing insurance fraud through investigation and prosecution is critically important to stopping misclassification and payroll fraud in Wisconsin. Currently, DWD's WC and UI Divisions jointly fund 1.0 FTE (Full-Time Equivalent) of an assistant attorney general and 0.50 FTE of an investigator (position currently vacant) at the DOJ. Despite DWD funding, there have been very few UI or WC fraud prosecutions, and no premium fraud prosecutions. While local district attorneys have jurisdiction to prosecute insurance fraud, few have the resources or expertise to do so. Most states, including our neighboring states of Minnesota, Illinois, and Iowa, have dedicated fraud bureaus/divisions with the necessary resources and expertise to investigate and prosecute insurance fraud. Without dedicated, state-level staff, investigation and prosecution of insurance fraud will continue to be minimal.

- 4. Request the Worker's Comp Ratings Bureau (WCRB) to modify its basic manual to revise its definition of remuneration to identify types of cash and noncash payments and make it consistent across various entities.**

Explanation:

Remuneration generally means anything an employee receives for performing a service or for being employed by a company or organization including but not limited to salary, cash payments, commission, wages, and room and board. The WCRB's basic manual is used by insurers throughout the state to perform audits. By making certain that the manual instructs the industry to look for cash and noncash payments in their audits, the likelihood that premium fraud is detected and stopped in industries that pay their employees off the books is increased.

- 5. Require DOJ and DWD to review Wis. Stat. § 108.24(2) and (2m) to determine whether the statute should be amended to better enable worker misclassification prosecutions.**

Explanation:

It is suspected that the low number of worker misclassification prosecutions under Wis. Stat. §108.24 is due to unreasonably stringent legal requirements contained in the statute. DWD and DOJ should review the laws to determine where it could be amended to better enable these prosecutions, thus holding the employers who break the law accountable and creating a level playing field for the thousands of employers who follow the law.

What happens when an employer misclassifies?

DWD vigorously investigates misclassification, and when it's found, DWD imposes:

- ▶ TAX,
- ▶ INTEREST,
- ▶ PENALTIES, and/or
- ▶ CRIMINAL PROSECUTION when warranted.



- 6. Engage relevant stakeholders to develop a statutory requirement of upstream liability, including upstream liability for wage theft, modeled after similar laws in other states. Explicitly address joint liability that is sometimes used by DWD's Equal Rights Division (ERD) in wage claim cases.**

Explanation:

After a long discussion among the Task Force members, it was agreed that a statutory requirement of upstream liability may be helpful to curb worker misclassification and unfair practices. This would be a significant change to current law and therefore needs additional stakeholder discussions to determine if a statutory change is needed. Stakeholders will include, among others, representatives of general contractors and subcontractors.

- 7. Create a law that requires ERD to investigate and adjudicate misclassification within the concept of labor standards. Do it in a way that still allows the Unemployment Insurance Division to enforce their laws, avoid confusion due to inconsistency in the law, and maximize investigatory and enforcement resources. Create a requirement in the law to require ERD to publish an annual report that includes all findings of misclassification by employer name and amount, modeled after [Pennsylvania Construction Workplace Misclassification Act](#).**

Explanation:

After creation of a statutory investigative bureau with broad authority over labor law enforcement including administrative findings and criminal penalties, Pennsylvania was able to increase its investigations and enforcement actions, resulting in administrative penalties exceeding \$2 million between 2014 and 2019. This recommendation seeks to create a Wisconsin structure that will better enable the compliance, investigation and enforcement of worker misclassification laws and payroll fraud.

CONCLUSION

Over the past year, the Task Force continued its investigation of policies and practices that are successfully reducing worker misclassification and payroll fraud. The recommendations presented in this report were the items the Task Force members agreed should be the primary focus for addressing those key issues but encourage continued study of additional measures that could be taken to combat worker misclassification.

The Task Force looks forward to working with the Governor's Office, the Legislature, state agencies, the Unemployment Insurance Advisory Council, the Worker's Compensation Advisory Council, and other interested stakeholders to implement these recommendations and develop solutions to further combat worker misclassification.

APPENDIX

Appendix 1 – Executive Order



EXECUTIVE ORDER #20

Relating to the Creation of the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification

WHEREAS, a significant number of employers in Wisconsin and elsewhere are improperly classifying individuals they hire as “independent contractors” even when those workers should be classified as employees;

WHEREAS, in 2009 the Wisconsin Department of Workforce Development, Unemployment Insurance Division found that 44% of the workers investigated during employer audits had been misclassified as independent contractors;

WHEREAS, from January 2016 to April 2019, the Worker Misclassification Section of the Department of Workforce Development conducted 1,963 investigations, with 422 resulting in audits. The 422 audits found 5,841 workers misclassified, found under-reported gross wages of almost \$70 million, and assessed approximately \$1.8 million in unemployment insurance taxes, interest, and penalties;

WHEREAS, worker misclassification denies vulnerable workers legal protections and benefits;

WHEREAS, this fraudulent practice also results in millions of dollars of losses to state government and taxpayers due to underpayments of wages, unemployment insurance contributions, worker’s compensation insurance, and payroll taxes;

WHEREAS, employers that misclassify workers as independent contractors gain an unlawful competitive advantage that allows them to under-bid and out-compete law-abiding employers;

WHEREAS, enforcement activities in this area have historically been divided among different agencies, which can reduce the efficiency and effectiveness of enforcement without intentional collaboration;

WHEREAS, research and experience in other states suggest that enforcement efforts to address the problem of misclassification can be enhanced and made more efficient through interagency cooperation, information-sharing, and joint enforcement efforts against serious violators; and

WHEREAS, research and experience in other states suggest that the creation of a joint task force has proven to be an effective mechanism for coordinating, enhancing, and streamlining enforcement in this area.

NOW, THEREFORE, I, TONY EVERS, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the Laws of the State, including Section 14.019 of the Wisconsin Statutes, do hereby create the Joint Enforcement Task Force on Worker Misclassification (“Task Force”) and order the following:

1. The Task Force shall be staffed by the Department of Workforce Development with technical assistance provided by staff of other agencies as needed. The Task Force shall consist of:
 - a. The Secretary of Workforce Development or a designee, who shall serve as the chair;
 - b. The Attorney General or a designee;
 - c. The Secretary of the Department of Revenue or a designee;
 - d. The Commissioner of Insurance or a designee;
 - e. The Administrator of the Worker's Compensation Division of the Department of Workforce Development;
 - f. The Administrator of the Unemployment Insurance Division of the Department of Workforce Development;
 - g. The Administrator of the Equal Rights Division of the Department of Workforce Development;
 - h. Other individuals appointed by the Governor to serve at the pleasure of the Governor, including at least one individual representing workers and at least one individual from the business community in an industry affected by misclassification, such as construction.

2. The Task Force shall facilitate coordination of investigation and enforcement of worker misclassification matters by the Department of Workforce Development, Department of Revenue, Commissioner of Insurance, Department of Justice, and other relevant agencies. This includes, but is not limited to:
 - a. Reviewing the work of the Worker Misclassification Task Force established by the Department of Workforce Development in October 2008, including its final report of June 2009, and the recommendations contained therein;
 - b. Examining and evaluating existing misclassification enforcement by agencies and reviewing the subsequent work on this issue by the Department of Workforce Development Misclassification Section;
 - c. Facilitating the sharing among the Task Force members of information relating to suspected worker misclassification violations, in a timely manner and to the maximum extent permitted by law;
 - d. Developing recommendations for pooling, focusing, and targeting investigative and enforcement resources;
 - e. Assessing existing methods, both within Wisconsin and in other jurisdictions, of preventing, investigating, and taking enforcement action against worker misclassification violations, and to develop best practices for participating agencies to improve their prevention and enforcement efforts;
 - f. Facilitating the filing of complaints and identification of potential violators;
 - g. Facilitating cooperation and participation of local district attorneys and other relevant state and federal agencies;
 - h. Working cooperatively with business, labor, and community groups interested in reducing worker misclassification, including but not limited to:
 - i. Seeking ways to prevent worker misclassifications, such as through the further dissemination of educational materials regarding the legal differences between independent contractors and employees; and
 - ii. Enhancing mechanisms for identifying and reporting worker misclassification where it does occur;
 - i. Increasing public awareness of the illegal nature of and harms inflicted by worker misclassification;
 - j. Working cooperatively with federal, state, and local social services agencies to aid vulnerable populations that have been exploited by

- worker misclassification, including but not limited to immigrant workers; and
 - k. Reviewing statutes and regulations related to worker misclassification and recommending any appropriate changes to relevant legislation or administrative rules.
3. The Task Force shall issue a report to the Governor on or before March of each year, which shall:
- a. Describe the accomplishments and recommendations of the Task Force;
 - b. Include the amounts of wages, premiums, taxes, and other payments or penalties collected with coordinated agency activities, as well as the number of employers cited for legal violations related to misclassification and the approximate number of workers affected;
 - c. Identify any administrative or legal barriers impeding the more effective agency coordination, including any barriers to information sharing or joint action;
 - d. Propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to:
 - i. Reduce or eliminate any barriers to coordinated agency investigations;
 - ii. Prevent worker misclassification from occurring;
 - iii. Investigate potential violations of the laws governing worker misclassification; and
 - iv. Improve enforcement where such violations are found to have occurred; and
 - e. Identify successful mechanisms for preventing worker misclassification, and thereby reducing the need for greater enforcement.
4. Every agency, department, office, division, or public authority of the State of Wisconsin shall cooperate with the Task Force and furnish such information and assistance as the Task Force determines is reasonably necessary to accomplish its purposes.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done in the City of Madison this fifteenth Day of April in the year of two thousand nineteen.

Tony Evers

 TONY EVERS
 Governor

By the Governor:

Douglas La Follette

 DOUGLAS LA FOLLETTE
 Secretary of State



Department of Workforce Development

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