**States Take Aim at Worker Misclassification by Inviting Multiple Agencies to Investigate Potential Incidences**

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Indiana, Oregon and Utah enacted laws this year that increase the likelihood that firms that do business with independent contractors – and are examined by one government agency – will be examined by other agencies as well. These new laws permit state agencies to share information regarding an incidence, or suspected incidence, of worker misclassification with other government agencies that have an interest in such matters. Additionally, one new law criminalizes worker misclassification in specified cases.

The practical effect of these new information-sharing laws is that affected firms could bear additional costs associated with being the subject of multiple investigations. The new laws also increase the likelihood of a firm receiving conflicting determinations on whether the independent contractors with whom it does business are classified properly – due to the different tests for determining worker status that commonly apply for purposes of different laws.

1. **Indiana**

Indiana enacted two new laws. One requires the Department of Workforce Development (the “Department”) to share with other state agencies information concerning suspected worker misclassification in the construction industry. The other makes it a misdemeanor to misclassify an employee as an independent contractor in specified circumstances. Both laws became effective on July 1, 2015.

H.B. 1601 amended Indiana’s Labor law to require the Department to “share information concerning any suspected improper classification by a [construction] contractor of an individual as an independent contractor” with the Department of Labor and the Worker’s Compensation Board of Indiana.

Requiring the Department to share information concerning *suspected* worker misclassification with two other state agencies can result in a construction contractor that is selected for audit by one state agency finding itself concurrently defending against similar audits by two additional agencies. One practical effect of this is to increase the cost and burden of defending against worker-classification audits.

Representative Ben Smaltz (R) introduced H.B. 1601 on January 20, 2015, and Governor Mike Pence (R) signed it into law on April 27, 2015.

Additionally, Indiana enacted H.B. 1019, which amends the state’s criminal statute by making it a misdemeanor for an employer to misclassify a worker as an independent contractor to avoid obtaining worker’s compensation coverage. This bill also permits a public agency that is in charge of a public works project to request the Department to investigate a contractor the public agency suspects has engaged in worker misclassification. The public agency would be required to provide the Department with any information or records it has concerning the suspected misclassification.

H.B. 1019 was introduced by Representative Jerry Torr (R) on January 6, 2015, and was signed into law by Governor Pence on May 6, 2015.

1. **Oregon**

Oregon recently enacted H.B. 3059, which permits its Bureau of Labor and Industries (“Bureau”) to share with the *Interagency Compliance Network[[1]](#footnote-1)* information regarding complaints concerning the employment of individuals who provide live entertainment performances. This new law also requires a live entertainment facility to display a poster containing, among other things, a summary of the rights of independent contractors and employees who perform live entertainment.

For these purposes, a “live entertainment facility” means a facility meeting specified criteria for which the number of live entertainment contractors exceeds the number of employees of the facility for at least two days during each week that the facility is open to the public.

The Bureau will be required to establish and maintain a toll-free telephone hotline to “receive inquiries and complaints related to employment in the performance of live entertainment.” And it will be permitted to share information regarding complaints it receives through such hotline with the *Interagency Compliance Network*.

The House Committee on Business and Labor introduced H.B. 3059 on February 20, 2015, and it was signed into law by Governor Kate Brown (D). It will be effective on January 1, 2016.

1. **Utah**

The state of Utah enacted a new law, H.B. 65, which became effective on May 12, 2015, that permits its Unemployment Insurance Division (“Division”) to disclose to the Wage and Hour Division (“WHD”) of the U.S. Department of Labor information regarding certain employers that have misclassified workers.

H.B. 65 permits the Division to disclose to the WHD:

1. The name and identifying information of an employer found by the department to have misclassified one or more workers [for unemployment insurance purposes];
2. The total number of misclassified workers for that employer; and
3. The aggregate amount of misclassified wages for that employer.

An affected employer must be given the opportunity to cure a misclassification of one or more workers before its information is disclosed to the WHD.

Representative Rebecca Edwards (R) introduced H.B. 65 on January 26, 2015. On March 25, 2015, Governor Gary Herbert (R) signed it into law.

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If you have any questions or comments regarding the foregoing, please let us know.

1. The *Interagency Compliance Network* consists of the Department of Justice, Department of Revenue, Employment Department, Department of Consumer and Business Services, Bureau of Labor and Industries, and Construction Board of Contractors. Its purpose is to coordinate employee misclassification enforcement efforts and establish consistency in agency determinations relating to worker classification. [↑](#footnote-ref-1)