

Client Alert

A report
for clients
and friends
of the Firm September 2007

New York State Task Force Targets Employers Who Misclassify Workers

On September 7, 2007, Governor Spitzer signed an Executive Order establishing the “Joint Enforcement Task Force on Employee Misclassification” (the “Task Force”). The Task Force is designed to strengthen New York State’s enforcement of laws against employers who misclassify workers as independent contractors rather than employees, or as exempt from minimum wage and overtime requirements. Concerned that misclassification of workers allows employers “to avoid [their] legal obligations under federal and state labor law, employment and tax laws, including laws governing minimum wage, overtime, prevailing wage, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and income tax,” the Task Force will increase the efficiency and effectiveness of law enforcement by enabling interagency cooperation, information sharing, and the rational allocation of government resources.

The Task Force will include representatives from the New York State Department of Labor, the Attorney General’s Office, the Department of Taxation and Finance, the Workers’ Compensation Board, the Workers’ Compensation Inspector General and the New York City Comptroller’s office. Each of these entities enforces laws relating to the misclassification of workers and together they will “develop strategies for systemically investigating employee misclassification”. Prior to this Executive Order, these offices did not coordinate their enforcement efforts. In addition to sharing information,

the Task Force will solicit complaints of wage violations through a telephone hotline and facilitate the prosecution of employers when appropriate by, among other things, referring cases to local district attorneys.

What Does This Mean For Employers?

With the Task Force in place, enforcement of State labor laws will likely rise and the scope and frequency of investigations into workplace practices (and the possible liability associated with such investigations) will increase. The increased attention by Governor Spitzer to the enforcement of laws focusing on the misclassification of workers is not wholly unexpected. As Attorney General, Governor Spitzer was very aggressive in bringing actions against employers for wage hour violations and the misclassification of workers, often seeking both civil and criminal penalties against employers who violated the labor laws. As Labor Commissioner Patricia Smith stated, “[t]his Executive Order is another powerful and unprecedented tool for protecting the basic rights of all of the state’s workers. The Joint Enforcement Task Force is assembled and ready to reverse several years of lax enforcement.” Thus, the Executive Order states, the misclassification of workers deprives workers of protections and benefits, gives employers who misclassify an unfair competitive advantage, and deprives the State of “substantial revenues”.

With this development, prudence dictates that employers review the classification status of workers classified as independent contractors or as exempt from the minimum wage and overtime laws. If you have questions, please contact your Proskauer relationship attorney or any of the attorneys listed below.

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