

2007 and 2008 State Legislation and Executive Orders

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Compiled by:

Matthew F. Capece

Representative of the General President

United Brotherhood of Carpenters and Joiners of America

101 Constitution Ave., NW

Washington, DC 20001

(202) 546-6206

Below is a list of 2007 and 2008 state executive orders and legislation that addresses labor law and employment tax fraud. Listed are bills that have been signed into law, have been vetoed or are still pending.

Bills marked with a “* “ have been signed by into law. “P” indicates that the session is still open and the legislation is pending. A “v” shows a governor’s veto.

2007 State Legislation and Executive Orders

California:

vSB 622 An Act prohibiting misclassification as an independent contractor:

(1) Establishes the willful misclassification of an employee as an independent contractor as a violation of the law. (2) Deductions from the pay of a misclassified worker for equipment, materials and services is a violation. (3) Provides penalties for violations.

*SB 869 an act relating to enforcing the requirement to carry workers’ compensation:

(1)Compares companies registered with unemployment to those with workers compensation to identify employers without compensation coverage. (2)Labor Commissioner to investigate employers identified through the program that don’t have insurance. (3)Penalties reinvested to administration and enforcement of Act. (4)Requires annual reporting on the program and posting of the report on the Labor Department’s web site.

Colorado:

* HB 1366 An Act Concerning Workers’ Compensation Coverage for Workers in the Construction Industry:

(1) Requires all workers on a construction site to have compensation coverage. Doesn’t apply to independent contractors if incorporated or an LLC, partnerships, corporate officers or sole proprietors who have waived coverage. Also, doesn’t apply to residential work of owner occupants. (2) Any person who contracts to perform construction work has to have compensation or proof of coverage from every person with whom there is a direct contract. (3) Violations result in a civil penalty. Penalty revenues are used for enforcement.

Connecticut:

* SB 931 An Act Concerning Penalties for Concealing Employment or Other Information Related to Workers' Compensation Premiums: (1) Establishes stop-work-orders against employers for workers' compensation premium fraud due to misclassification or for not having compensation insurance. (2) Makes not having comp. a felony. (Premium fraud had already been a felony.)

Delaware:

* SS 1 for SB 68 An Act to Amend Workers' Compensation Code: The bill clarifies the obligations of independent contractors and subcontractors with respect to maintaining workers' compensation insurance. Persons contracting with independent contractors are responsible for covering their claims if the person fails to secure a certificate of insurance or notice of exemption.

Illinois:

* PA 95-0026 Employee Classification Act: (1) For the purposes of the Act, creates a presumption of employment in the construction industry. (2) Makes the failure to properly classify a worker as an employee a violation of law. (3) Exempts contractors from liability for the violations of their subcontractors. (4) Requirements of Act posted in Labor Department offices and its web site in multiple languages. (5) Provides for agency and private enforcement. The Department gets investigatory subpoena power. Violations can result in (a) a stop-work order (law doesn't come out and say "stop work order," but the ability is there), (b) collection of any wages or compensation denied or lost, (c) criminal penalties, (d) civil penalties, (e) debarment and (f) extra penalties for willful violations. (Willfulness is proven by a preponderance of the evidence.) (6) All moneys collected go into an enforcement fund. (7) There is whistleblower protection. (8) Private suits can be brought by anyone interested in compliance with the Act and damages include (a) wages or compensation lost or denied, (b) liquidated damages of \$500 per violation, (c) attorney's fees and costs. (8) The Act requires state agencies to cooperate in enforcement actions and if misclassification is found to check if there are violations of the laws under their jurisdiction—workers' compensation, unemployment, etc.

Minnesota:

* Chapt. 135, HF 122, Sec. 15 Defining independent contractor status and requiring certification: (1) Creates a presumption of employment for workers compensation, unemployment and other labor laws in the construction industry if services are in the course of a client's trade or business. (2) To be considered an independent contractor under those laws a worker has to hold a certificate from the Department of Labor. Bill establishes an application process and qualifications for independent contractor certification. (3) Certificates last for 2 years. Certificates can be cancelled by the individual or revoked by the state if the individual no longer meets the criteria. (4) Persons can't work as an independent contractor without having a certificate. (5) Prohibits misrepresentation on applications and forcing person to apply for certification. (6) "Knowingly" defined as knew or could have known. (7) \$5,000 fines per violation.

(7) Provides for investigatory subpoena power. (8) Commissioner of Revenue to be notified of violations.

Montana:

* HB 65 § 1 An Act Generally Revising Workers' Compensation Law: Section 1 of the Act gives workers compensation investigators access to construction sites to investigate compliance with coverage requirements.

New Hampshire:

* SB 92 An Act Relative to the Definition of Employee and Clarifying the Criteria for Exempting Workers from Employee Status: (1) In order to protect employees from being misclassified as independent contractors, the Act creates a uniform definition of employment for (a) workers compensation, (b) workplace protections, (c) whistleblower and (d) minimum wage. (2) For workers compensation a presumption of independent contractor status can be created by contract, but civil penalties are imposed if the contract is intended to misrepresent the employment relationship. Penalties are deposited into a dedicated enforcement fund.

* HB 336 An Act Requiring Notice of the Classification of Employee and Independent Contractor: Requires employers to post information about criteria for classifying workers as employees and independent contractors.

* HB 337 An Act Relative to Penalties for Failure to Have Workers' Compensation and Continually Appropriating a Special Fund: (1) Increases civil penalties for failure to secure compensation coverage. (2) Persons with responsibility to disburse funds or salaries are held personally liable. (3) Insurers fined if they don't supply the state with notice of coverage within a reasonable time. (4) The penalties are deposited into a designated enforcement fund.

*HB 426 An Act relative to workers' compensation and resolution of disputes involving employment status: The insurance commissioner can conduct investigations and hold hearings to resolve disputes between employers and their workers' compensation carriers to determine whether workers are employees or independent contractors for the purpose of establishing whether additional premium is owed.

* HB 471 An Act Relative to Workers' Compensation Compliance in the Construction Sector and Continually Appropriating a Special Fund: (1) Officers, directors or LLC members of a construction company who do on-site construction work cannot be excluded from compensation coverage. (2) Requires all contractors, subcontractors and independent contractors on state projects to provide proof of workers' compensation coverage. The number of employees or independent contractors and their compensation classification codes on such projects also must be disclosed. Violations can result in civil penalties and debarment. Civil penalties go to a workers' compensation enforcement fund.

New Jersey:

* A 4009 An Act Concerning the Classification of Construction Employees for Certain Purposes and Supplementing Title 34 of the Revised Statutes: (1) Establishes the failure to properly classify a worker as an employee a separate violation of law. (2) For construction work it creates a universal presumption of employment and a uniform definition under state law—with the exception of the state workers compensation act. (3) Knowing violations result in criminal penalties. Other penalties include debarment, restitution, suspension of contractor registration, stop-work orders and fines. Fines go an enforcement and administrative fund. (4) Provides for private-causes of action for workers. Class actions suits are possible, and actions can be brought on behalf of a worker or class by worker representatives. Damages include attorney's fees and costs. (5) The Act also gives individuals who file complaints or provide information whistleblower protection.

New York:

*Executive Order 17 Misclassification Task Force: 1)Forms a task force of representatives from the labor department, attorney general, taxation and finance, workers compensation board, workers compensation fraud and New York City comptroller. 2) Purpose is to coordinate investigations, share information, pool resources and to consult business, labor representative and other representatives. 3)Reporting to the governor is required.

*S 3322, A 6163 An Act to Amend the Workers' Compensation Law, §§52D, 141A: Establishes stop work orders, debarment and criminal penalties for employers who don't have workers compensation or who commit premium fraud.

Rhode Island:

vS 500 An Act relating to misclassification of employees: Gives a right to sue for damages to an entity that loses a bid to another that misclassifies employees as subcontractors.

South Carolina:

*SB 332 An Act reforming workers compensation, Sections 3, 4, 5: (1) Clarifies that a false statement or misrepresentation to gain a lower insurance premiums includes misclassification of employees. (2) Penalties for workers compensation fraud increase with amount of money involved. (3) Gives state Attorney General authority to hire a forensic accountant for investigations.

Tennessee:

*SB 1784 An act regarding contractor licensing: Any applicant for a license or renewal of a license must supply an affidavit that the applicant maintains general liability and workers' compensation insurance coverage.

Vermont:

*SB 196 An Act Relating to Failure to Insure for Workers' Compensation Coverage by Employers and Contractors: (1) Creates a new requirement for a contractor (other than

residential), upon request of the state, to submit a “compliance statement” with the number of employees, number of hours on which compensation was paid, classification codes and the name of the insurance carrier and agent. Failure to comply or filing false information results in fines and other penalties. The compliance statement is a public document. (2) State will study (a) establishing a proof-of-coverage website (b) extent of misclassification and cost to workers compensation and (c) effectiveness of state laws to counter misclassification.

Washington:

*HB 2010 An Act Relating to Bidder Responsibility: (1) Bidders and bidders subcontractors on public works contracts must comply with registration, tax and workers compensation laws. (2) Municipalities given the power to adopt other criteria to judge responsibility. (3) State agencies and municipalities can create “small works rosters” of responsible contractors.

*SB 5373 An act relating to unemployment coverage and obligations: (1) Sec. 4 Defines who a bona fide officer is for exemption from unemployment. (2) Sec. 8, et. seq. Settles co-employment coverage for professional employer organizations and client employers and establishes reporting and registration requirements. (3) Sec. 14, 15 Defines temporary staffing agencies and unemployment coverage obligations.

*SB 5926 An Act Relating to Creating a Joint Legislative Task Force to Review the Underground Economy in the Construction Industry: Establishes a task force to study the underground economy in construction and to formulate a state policy. Members include legislators, contractor and employee representatives.

2008 State Legislation and Executive Orders

California

pSB 1490 An act relating to employment of individuals as independent contractors: 1) Bill requires employers to give persons hired as independent contractors a notice that a) describes how independent contractor status impacts the persons rights and obligations under law and b) how the person can go challenge status designation through the Employment Dev. Dept. 2) Employers must keep records of employment of independent contractors for 2 years. 3) Failure to give notice, keep records, provide access to records to the department or hinder an investigation can lead to a \$500 civil penalty or misdemeanor charge.

pAB 2879 An act relating to employment and state audits: The bill requires various state-enforcement agencies to establish a criteria that will trigger audits of employers in order to capture lost revenue from the underground economy.

p SB 1583 An act prohibiting advising an employer to misclassify: The bill prohibits a person, for pay, from knowingly advising an employer to classify persons as independent contractors to avoid employee status. The prohibition doesn't extent to a attorneys or to

persons advising their employer. Violators are as liable as the employer if a worker is not an independent contractor.

Status: Passed both houses. Off to the governor. 9/08

Connecticut

*PA 8-156 An Act Establishing a Joint Enforcement Commission on Employee Misclassification: 1)Bill establishes a task force made of the labor commissioner, chair of the workers compensation commission, attorney general and the chief state's attorney.2)Purpose is to: (a)coordinate civil and criminal investigations and prosecutions, (b) consult with representatives of business and labor to make recommendations for improving state enforcement and to reduce misclassification (c) cooperate with state and other social service organizations to assist employees exploited by misclassification. 3)Establishes an advisory board of labor and business representatives. 4)Report required to governor and joint standing committees on actions and recommendations for administrative or legislative actions.

Florida

*S 2158 An act tightening regulation of check cashing businesses: The bill contains numerous provisions designed to crack down on use of check cashing stores in money laundering schemes. Check cashing stores have proven to play a central role in hiding unreported cash transactions to escape employment tax and workers compensation coverage laws. Some of the new record keeping requirements includes keeping copies of the photo identification of presenters of checks over \$1,000 and in some instances thumb prints. There are numerous criminal penalties for violating record keeping requirements and other unlawful practices.

Iowa

*Executive Order 8 Independent Contractor Reform Task Force: 1) This is a study task force made of representatives from the Governor's office, Workforce Development, Department of Revenue, Economic Development and the Labor Commissioner. 2) The purpose is to study misclassification and make recommendations on education and any needed changes for enforcement, regulations and legislation. 3) A report is due on the Governor's desk no later than December 17, 2008.

Louisiana

*HB 554 An act relative to discontinuance of business operations and penalties for failure to carry workers compensation insurance: The bill amends current law providing that a court must order a non-compliant employer to secure workers compensation insurance and pay a fine up to \$10,000 within ninety days. If the employer fails to do either, the court will issue an order to the employer to cease business operations until the employer has insurance and has paid fines in full.

Massachusetts:

*S 1059 An Act to clarify the law protecting employee compensation: The bill provides for private and class action suits regarding prevailing rate, overtime and minimum wage violations. Recovery includes treble damages, costs and attorney fees.

*Exec Order 499 Establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification: (1) Task force to include representatives from the labor department, revenue, industrial accidents, attorney general, occupational safety, public safety, licensing, apprenticeship and unemployment tax. (2) Purpose of the task force is to foster compliance with the law by education, conduct joint, targeted investigations, protect health and safety and restore a level playing field for law-abiding businesses. Task force members are required to share information, identify and investigate non-compliant industries, seek cooperation and advice from labor and business representatives, work with social service agencies to assist exploited workers and identify changes in the law that are needed. (3) An annual report to the governor is required.

Michigan

*Exec Order 2008-1 Interagency Task Force on Employee Misclassification: (1) Task force is made of representatives of the Director of the Department of Labor, workers compensation, unemployment, tax enforcement and business services. (2) The purpose of the task force is to improve interagency cooperation and information sharing. Also, they are to work on law enforcement strategies, solicit case referrals, work with the labor and business communities, cooperate with local and federal agencies and make recommendations for legislation. (3) The task force can hold hearings and report to the governor.

Minnesota

* Chapter 154 HF 3201 Article 3 Income Taxes, Sec. 8 and 9: 1) Law requires a 2 percent withholding of state income taxes from compensation paid to independent contractors in the construction industry. (2) It also requires sample auditing of those withholdings and a report to the legislature.

Missouri

*HB 1549T Addressing immigration and misclassification: Some misclassification provisions in SB 929 added to immigrations bill. 1) The act requires every employer in the state with 5 or more employees to file 1099 forms with the state for its independent contractors. Failure to repeatedly file the forms results in misdemeanor charges and fines. 2) Employment is defined by the IRS twenty factor test. 3) A violation occurs if an employer knowingly or has reason to know that a worker is an employee but fails to claim the worker as an employee. 4) Attorney general investigates violations. 5) Violations can result in a) injunction against prohibited acts, b) \$50 penalty for knowing misclassification include per worker per day fines up to total of \$50,000.

New Hampshire:

*HB 692 An Act Relative to Workers Compensation: The legislation amends HB 471 passed in 2007. HB 692 re-establishes exemptions from workers compensation coverage for up to three executive officers or members of a corporation or limited liability company.

*SB 500 An Act Relative to Certain Insurance Fraud and Establishing a Task Force on Employee Misclassification: (1) Increases penalty for the failure to carry workers' compensation to a class B felony. (2) Requires insurers to have written or electronic signatures on insurance, including workers' compensation, applications. The lack of a signature isn't a defense against prosecution. (3) Any person convicted of insurance fraud will be barred from participating in a public works project for 1 to 3 years and will be ordered to pay restitution to the insurance carrier. The third offense will result in a permanent debarment. (4) A misclassification task force is established. (a) Task force includes representatives of: state senate, state house of representatives, labor commissioner, commissioner of unemployment, commissioner of insurance, commissioner of revenue, attorney general, labor unions, construction contractors, other business owners and insurance carriers. (b) The purpose of the task force is to study misclassification and issue a report and recommendations for proposed legislation on these dates: Dec. 1, 2008, Oct. 1, 2009, June 1, 2010 and Dec. 1, 2010.

New Jersey

*Exec. Order No 96 Governors Advisory Commission on Construction Industry Independent Contractor Reform: (1) The order establishes an advisory commission of representatives from Labor & Workforce Development, the Attorney General's office, Treasurer's office and eight public representatives from labor unions, developers and contractors. (2) Purpose of the commission is to create public awareness and make recommendations to enhance enforcement of the law and cooperation between state and federal agencies. (3) The commission can hold hearings and must report to the governor.

Tennessee

*HB 1645 An Act relative to requiring workers compensation coverage for sole proprietors: 1)The bill would require workers compensation coverage in the construction industry for sole proprietors and independent contractors. Contractors using independent subcontractors would have to cover them with workers compensation insurance. 2)Some exemptions exist for work done for home owners-the sole proprietor wouldn't have to have coverage but any workers for the sole proprietor would have to have coverage.

Utah

*SB 189 Independent Contractor Database Act: 1) Act creates an independent contractor enforcement council. Council made of representatives from departments/agencies of commerce, labor, workforce services and technology services. 2) Purpose is to form a database that will track independent contractors and compare information between agencies. Also, want to study cost of misclassification, and reduce instances of intentional misclassification. Council is also to coordinate enforcement efforts. They are assisted by office of public safety and commissioner of taxation. 3) Annual report to be issued on extent of efforts and degree of misclassification.

Vermont

*S. 345 An Act Related to Lowering the Cost of Workers' Compensation Insurance: The bill contains provisions about safety and other issues to lower workers compensation premiums. Also: 1) The bill adds workers compensation fraud into the insurance fraud

chapter. 2) As amended, the bill creates a joint enforcement task force that expires in 2010.

Washington

*HB 3122 An Act Relating to Consolidating, Aligning, and Clarifying Exception Tests for Determination of Independent Contractor Status: Under current law, independent contractors are not required to be covered by workers compensation or unemployment benefits. This bill applies a uniform definition of independent contractor in the unemployment and workers compensation codes. The bill applies recommendations of the underground economy task force.