

## Worker Misclassification Fact Sheet

**1. States that have passed laws or formed task forces addressing the problem of misclassification of employees as independent contractors:** Massachusetts, Michigan, New Jersey, Iowa, New York, Minnesota, Vermont, Washington, Rhode Island, Louisiana, New Hampshire, Connecticut, Utah, Indiana, Illinois.<sup>1</sup>

**2. Sample of state laws addressing improper classification as an independent contractor:**<sup>ii</sup>

**Connecticut:** §31-288(g). Any employer who . . . (1) knowingly misrepresents one or more employees and independent contractors, or (2) knowingly provides false, incomplete or misleading information to such company concerning the number of employees . . . **shall be guilty of a class D felony.**

**Florida:** §440.10(f). If an employer fails to secure compensation as required by this chapter, the department shall assess against the employer a **penalty not to exceed \$5,000 for each employee** of that employer who is classified by the employer as an independent contractor but who is found by the department to not meet the criteria for an independent contractor that are set forth in s. 440.02.

**Georgia:** §48.7.127(j) (1) It shall be unlawful for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor or falsely to claim that an individual employed by such person is an independent contractor in order to avoid or evade the withholding or payment of taxes required under this title. (2) [creates a **fine of twice the amount of tax owed for second offense and four times the amount of tax owed for third and subsequent offenses.**]

**Indiana:** IC6-3-7-5. An independent contractor shall file a statement in order to obtain a certificate of independent contractor status to be exempt from worker's compensation coverage. A contractor who knowingly or intentionally causes or assists employees, including temporary employees, to file a false statement and supporting documentation of independent contractor status commits a **Class D felony.**

**Montana:** MCA 39-71-419: An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage. In addition to any other penalty provided in this chapter, a person or employer who violates this section is subject to a **fine of up to \$1000 for each violation.**

**New Mexico:** N.M.S.A. §60-13-3.1 C. A contractor who intentionally and willfully reports to a state agency or other client that an employee is an independent contractor . . . when the employee's status does not meet the standards . . . is **guilty of a misdemeanor and shall be punished by a fine of not more than five thousand dollars or by imprisonment for a definite term not to exceed six months or both.** (also provides for suspension of a contractor's license.)

### **3. Estimates of lost revenues by state as a result of misclassification:<sup>iii</sup>**

California: losses of up to \$7 billion annually in uncollected income taxes.

Connecticut: \$65 million in uncollected income taxes and \$17 million loss to unemployment insurance fund.

Illinois: misclassification cost the state up to \$248 million in income tax revenues annually; Bureau of Workers' Compensation loses approx. \$96 million each year.

Maine: Failed to collect up to \$4.3 million in income taxes due to misclassification in the construction industry alone. The state estimates that 11% of employees are misclassified.

Massachusetts: losses of \$152 million in uncollected income taxes; \$35 million in lost unemployment taxes and \$91 million workers compensation premiums lost.

New York: Lost \$1.2 million in income taxes and \$176 million in unemployment taxes. Misclassified employees were owed \$3 million from employers.

Ohio: Estimated loss of \$36 million in unpaid income taxes each year; \$20 million annual loss to unemployment insurance fund; \$103 million annual cost to workers' compensation system.

Pennsylvania: \$200 million in lost unemployment funds; \$81 million cost to workers' compensation fund.

Vermont: misclassification adds up to 20% to workers' comp insurance costs of properly classified employees and their employers.

Washington: \$274 million loss in unpaid income and unemployment taxes and worker's compensation premiums.

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<sup>i</sup> National Employment Law Project report, "Summary of Independent Contractor Reforms" July 2008.

<sup>ii</sup> National Conference of State Legislatures "State Statutes on Employee Misclassification as Independent Contractors", September 2008.

<sup>iii</sup> Source materials vary by state.