

Governor Murphy Creates Task Force on Employee Classification

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New Jersey is turning up the heat on employers that misclassify employees as independent contractors.

On May 3, 2018, Governor Phil Murphy signed an executive order (“Order”) establishing a [Task Force on Employee Misclassification](#) (“Task Force”) to address concerns surrounding the misclassification of employees as independent contractors. The governor’s stated reasons for issuing the Order include the loss of tax revenue arising from employee misclassification, which some audits have estimated to amount to more than \$500 million yearly, and the asserted loss to workers of important employment-related benefits and legal protections to which they are entitled.

The Task Force’s mandate is to provide advice and recommendations to the Governor’s office and executive branch departments and agencies on both strategies and actions to fight misclassification. Specifically, the Order charges the Task Force with:

- a. Examining and evaluating existing misclassification enforcement by executive departments and agencies;
- b. Developing best practices by departments and agencies to increase coordination of information and efficient enforcement;
- c. Developing recommendations to foster compliance with the law, including by educating employers, workers, and the public about misclassification; and
- d. Conducting a review of existing law and applicable procedures related to misclassification.

The Task Force will be comprised of at least 12 members, including three representatives from the New Jersey Department of Labor and Workforce Development, three representatives from the Department of the Treasury, and one representative each from the Department of Law and Public Safety, the Department of Agriculture, the Department

of Banking and Insurance, the Department of Human Services, the Department of Transportation, and the Economic Development Authority.

The Order calls for the Task Force to organize and meet as soon as possible to begin its work and is a likely harbinger of increased governmental audits and enforcement actions. Accordingly, the time is ripe for employers to review their policies and practices with respect to consultants and other independent contractors to ensure that they meet New Jersey's stringent requirements for classifying workers as independent contractors.

As we have previously [discussed](#), New Jersey follows the "ABC test" for classifying workers as independent contractors under the New Jersey Wage Payment Law and the New Jersey Wage and Hour Law. Under the ABC test, to sustain a worker's classification as an independent contractor, a company must demonstrate that the individual working in New Jersey:

- (A) is free from the company's control in performing the services; **and**
- (B) performs work outside the usual course of the company's business or outside the company's place of business; **and**
- (C) is engaged in an independently established business.

Unless all three criteria are met, New Jersey considers the worker to be an employee who should be paid on a W-2 basis with applicable withholdings and deductions, including for New Jersey unemployment and temporary disability benefits. In addition to an assessment of past contributions that should have been made to the state and interest, employers that misclassify their workers as independent contractors may be subject to civil and even criminal penalties. Depending on the circumstances, an employer could also be liable to an employee for failure to pay the minimum wage and for unpaid overtime.

What Employers Should Do Now

- If you do business in New Jersey, review those workers and entities paid on a 1099 basis to determine whether any or all of them should be reclassified. Consider conducting the review with the assistance of legal counsel.
- When performing the review, be mindful that all three criteria of the ABC test must be met and that, for example, paying a worker by check to a limited liability company will not alone guarantee that the individual will be deemed an independent contractor.
- Ensure that managers with authority to engage consultants and other independent contractors and human resource professionals are aware of the strict limitations that New Jersey places on paying workers on a 1099 basis.

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