

**Appendix 5**

**Massachusetts Attorney General Opinion  
On Three-Prong Employee Definition Test  
(2008)**

**An Advisory from the Attorney General's Fair Labor Division on  
M.G.L. c. 149, s. 148B  
2008/1<sup>1</sup>**

The Office of the Attorney General (AGO) issues the following Advisory regarding M.G.L. c. 149, s. 148B, the Massachusetts Independent Contractor Law or the Massachusetts Misclassification Law (the "Law"). This Advisory provides guidance with respect to the Attorney General's understanding of and enforcement of the Law. This Advisory is not a formal opinion. Opinions of the Attorney General are formal documents rendered pursuant to specific statutory authority. M.G.L. c. 12, s. 3, 6, and 9. The Advisory is intended to provide guidance only and does not create any rights or remedies.

## **I. INTRODUCTION**

### **A. The Need for Enforcement**

The need for proper classification of individuals in the workplace is of paramount importance to the Commonwealth.<sup>2</sup> Entities that misclassify individuals are in many cases committing insurance fraud and deprive individuals of the many protections and benefits, both public and private, that employees enjoy. Misclassified individuals are often left without unemployment insurance and workers' compensation benefits. In addition, misclassified individuals do not have access to employer-provided health care and may be paid reduced wages or cash as wage payments.

Similarly, entities that misclassify individuals deprive the Commonwealth of tax revenue that the state would otherwise receive from payroll taxes. In addition, as a result of misclassification, the Commonwealth often incurs additional costs, such as providing health care coverage for uninsured workers. Other potential costs for the Commonwealth include providing workers' compensation benefits paid by the Workers' Compensation Trust Fund, and unemployment assistance without employer contribution into the Division of Unemployment Assistance fund, among other indirect costs.

Finally, businesses that properly classify employees and follow all of the relevant statutes regarding employment are likely to be at a distinct competitive disadvantage when vying for the same work, customers or contracts as those businesses that do not play by the rules. Further, by paying the proper taxes and insurance premiums, businesses following the Law are, in effect, subsidizing those businesses that do not. Misclassification undermines fair market competition and negatively impacts the business environment in the Commonwealth. The AGO expects businesses to contract only with businesses that properly classify their workers.

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<sup>1</sup> This Advisory supersedes the Attorney General's prior Advisories regarding M.G.L. c. 149, s. 148B, including "An Advisory from the Attorney General, Amendments to Massachusetts Independent Contractor Law," Advisory 2004/2; and an "Advisory from the Attorney General's Fair Labor and Business Practices Division on the Issue of Employee Versus Independent Contractor," Advisory 94/3.

<sup>2</sup> The Commissioner of Revenue is charged with administering the Massachusetts wage withholding laws under M.G.L. c. 62B, which provides a different definition of employee than M.G.L. c. 149, s. 148B, for purposes of Massachusetts income tax withholding. See Department of Revenue TIR 05-11: Effect of New Employee Classification under M.G.L. c. 149, s. 148B on Withholding of Tax on Wages under M.G.L. c. 62B. In addition, a definition similar but not identical to M.G.L. c. 149, s. 148B, exists for unemployment insurance purposes. M.G.L. c. 151A, s. 2. The Massachusetts Workers' Compensation Law also provides a different definition of employee. M.G.L. c. 152, s. 1(4).

## B. The History of the Law

The proper classification of employees has long been an issue of great concern in the Commonwealth. Under common law, a number of factors determined the existence of an employer/employee relationship based on the totality of the relationship. See, e.g., *Commonwealth v. Savage*, 31 Mass. App. Ct. 714 (1991). Those factors included the degree of control, the opportunity for profit and risk of loss, the employee's investment in the business facility, the permanency of the relationship, the skill required and the degree to which the employee's services were integral to the business.

In 1990, Massachusetts enacted the first version of the Law. By enacting the Law, the Legislature established that notwithstanding that a working relationship could be considered to be one of independent contractor under common law, the worker may still be deemed in employment for the purposes of the Law. *Boston Bicycle Couriers v. Deputy Director of the Division of Employment and Training*, 56 Mass. App. Ct. 473, 477 (2002)

Subsequent to its enactment in 1990, the Law has undergone several amendments including: Section 214 of Chapter 286 of the Acts of 1992; Section 165 of Chapter 110 of the Acts of 1993; Section 12 of Chapter 236 of the Acts of 1998; and Section 26 of Chapter 193 of the Acts of 2004. The 2004 amendment was part of legislation making broad changes to the laws governing the public construction industry. However, the Law, including the 2004 amendment, applies more broadly to a wide range of industries. The 2004 amendment kept intact, in large part, the standard for determining whether an individual is an employee, but made several changes from the earlier version of the statute. The amendment deleted the element "or is performed outside of all places of the business of the enterprise" as an alternative factor in prong two. In addition, the first element of prong two of the Law had read: "such service is performed . . . outside the usual course of business for which the service is performed. . ." After the 2004 amendment, the element reads: "the service is performed outside the usual course of business of the employer." Finally, the amendment added "trade" to the list of activities eligible for independent contractor status in prong three.

## II. THE LAW

M.G.L. c. 149, s. 148B, provides a three-part test which requires that all three elements (commonly referred to as prongs one, two and three or the A, B, C test) must exist in order for an individual to be classified other than as an employee. The burden of proof is on the employer, and the inability of an employer to prove any one of the prongs is sufficient to conclude that the individual in question is an employee. M.G.L. c. 149, s. 148B (using the term "unless"). See also *Scalli v. Citizens Financial Group*, 2006 WL 1581625, \*14 (D. Mass. 2006); *Rainbow Development, LLC v. Com., Dept. of Industrial Accidents*, 2005 WL 3543770, \*2 (Mass. Sup. Ct. 2005).

Courts have had a limited opportunity to interpret M.G.L. c. 149, s. 148B. In *College News Service v. Department of Industrial Accidents*, 21 Mass. I. Rptr. 464, 2006 WL 2830971, the Superior Court noted that M.G.L. c. 149, s. 148B is almost identical to M.G.L. c. 151A, s. 2, the statute used by the Division of Unemployment Assistance, and therefore relied on the case law analyzing M.G.L. c. 151A, s. 2 to interpret M.G.L. c. 149, s. 148B. See \*4 ("If the Legislature uses the same language in several provisions concerning the same subject matter [e.g., the definition of an employee in distinction from an independent contractor], the courts will presume it to have given the language the same meaning in each provision").

See also *Commonwealth v. Germano*, 379 Mass. 268, 275-76 (1979). Because prongs one and three of M.G.L. c. 149, s. 148B and M.G.L. c. 151A, s. 2 are nearly identical and because prong two of M.G.L. c. 149, s. 148B contains one of the two steps of prong two in M.G.L. c. 151A, s. 2, Massachusetts case law interpreting M.G.L. c. 151A, s. 2 provides a useful guide to interpreting M.G.L. c. 149, s. 148B.

## A. The Three Prong Test

### Prong One: Freedom from Control

The first prong of M.G.L. c. 149, s. 148B provides that the individual must be "free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact" in order for the individual to be an independent contractor. In *Commissioner of the Division of Unemployment Assistance v. Town Taxi of Cape Cod*, 68 Mass. App. Ct. 426, 434 (2007), the Court noted in interpreting the nearly identical language of prong one of M.G.L. c. 151A, s. 2 that:

The first part of the test examines the degree of control and direction retained by the employing entity over the services performed. The burden is upon the employer to demonstrate that the services at issue are performed free from its control or direction. The test is not so narrow as to require that a worker be entirely free from direction and control from outside forces.

*Id.* (citations omitted)

The first prong of the test includes a determination of the employer's actual control and direction of the individual. See M.G.L. c. 149, s. 148B (using the phrase "in fact"). An employment contract or job description indicating that an individual is free from supervisory direction or control is insufficient by itself to classify an individual as an independent contractor under the Law. To be free from an employer's direction and control, a worker's activities and duties should actually be carried out with minimal instruction. For example, an independent contractor completes the job using his or her own approach with little direction and dictates the hours that he or she will work on the job.

### Prong Two: Service Outside the Usual Course of the Employer's Business

Prong two of M.G.L. c. 149, s. 148B(a)(2) provides that the service the individual performs must be "outside the usual course of business of the employer" in order for the individual to not be classified as an employee. Prior to the 2004 amendment, the employer could alternatively demonstrate that the work was performed "outside of all places of the business of the enterprise." The Law does not define "usual course of business" and Massachusetts courts have had limited opportunities to do so. In *Athol Daily News v. Division of Employment and Training*, 439 Mass. 171, 179 (2003), the Court found that newspaper carriers were performing the "usual course of business" of the newspaper relying on the employer's own definition of its business. In *American Zurich v. Dept. of Industrial Accidents*, 2006 WL 2205085, \*4 (Mass. Super. 2006), Judge Paul Troy noted that "a worker whose services form a regular and continuing part of the employer's business" and "whose method of operation is not such an independent business" through which workers' compensation costs can be channeled, "should be found to be an employee." *Id.* Yet, "if the worker is performing services that are part of an independent, separate, and distinct business from that of the employer," prong two is not implicated. *Id.*

### **Prong Three: Independent Trade, Occupation, Profession or Business**

Prong three provides that the individual "is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed" in order for the individual to be classified other than as an employee M.G.L. c. 149, s. 148B(a)(3). "Under the third prong, the court is to consider whether the service in question could be viewed as an independent trade or business because the worker is capable of performing the service to anyone wishing to avail themselves of the service or, conversely, whether the nature of the business compels the worker to depend on a single employer for the continuation of the services" *Coverall v Division of Unemployment Assistance*, 447 Mass. 852, 857-58 (2006) (interpreting prong three of M.G.L. c. 151A, s. 2) The court went on to note in *Coverall*:

Although the court can consider whether a worker is capable of performing the service to anyone wishing to avail themselves of the services, the court may also consider whether the nature of the business compels the worker to depend on a single employer for the continuation of the services [citation omitted]. In this regard, we determine whether the worker is wearing the hat of the employee of the employing company, or is wearing the hat of his own independent enterprise.

*Id*

### **B. Issues Deemed Irrelevant**

An employer's failure to withhold taxes, contribute to unemployment compensation, or provide worker's compensation is not considered when analyzing whether an employee has been appropriately classified as an employee. M.G.L. c. 149, s. 148B(b). Hence, an employer's belief that a worker should be an independent contractor has no relevance in determining whether there has been violation of the Law. Similarly, the Law deems irrelevant the status of a worker as a "sole proprietor or partnership," for the purpose of obtaining worker's compensation insurance. M.G.L. c. 149, s. 148B(c)

### **C. Violation of the Law**

M.G.L. c. 149, s. 148B(d) provides that an employer violates the statute when two acts occur. First, the employer classifies or treats the individual other than as an employee although the worker does not meet each of the criteria in the three prong test. Second, in receiving services from the individual, the employer violates one or more of the following laws enumerated in the Law:

- The wage and hour laws set forth in M.G.L. c. 149.
- The minimum wage law set out in M.G.L. c. 151, s. 1A, 1B, and 19; 455 CMR 2.01, et seq.
- The overtime law set forth in M.G.L. c. 151, s. 1, 1A, 1B, and 19.
- The law requiring employers to keep true and accurate employee payroll records, and to furnish the records to the Attorney General upon request as required by M.G.L. c. 151, s. 15.
- Provisions requiring employers to take and pay over withholding taxes on employee wages M.G.L. c. 62B.<sup>3</sup>
- The worker's compensation provisions punishing knowing misclassification of an employee. M.G.L. c. 152, s. 14.

<sup>3</sup> As noted in footnote 2, for purposes of income tax withholding, M.G.L. c. 62B provides a definition of employee that differs from the three prong test in M.G.L. c. 149, s. 148B

The statute authorizes the Attorney General to impose substantial civil and criminal penalties, and in certain circumstances, to debar violators from public works contracts. M.G.L. c. 149, s. 27C(a)(3). The penalties and length of debarment depend upon the nature and number of violations. M.G.L. c. 149, s. 148B(d) also creates liability for both business entities and individuals, including corporate officers, and those with management authority over affected workers.

### III. ENFORCEMENT GUIDELINES

#### A. General Enforcement Guidelines

The AGO recognizes that enforcement guidelines are useful to employers, entities and individuals who must determine whether a particular situation or individual has employee status. When enforcing the Law, the AGO attempts to protect workers, legitimate businesses and the Commonwealth, consistent with the goals of the Law outlined in the Introduction.

The Law is focused on the misclassification of individuals. In the event that all individuals performing a service are classified and legitimately treated as employees of an entity (paid W-2 income, received W-2 tax forms, subject to withholdings for federal and state taxes, covered by workers' compensation insurance, eligible for unemployment compensation benefits, etc.) and are performing the service as an employee, then there is no misclassification of those workers. Accordingly, in determining whether the Law has been violated, the initial question is whether an individual or individuals are classified other than an employee. For example, if painting company X cannot finish a painting job and hires painting company Y as a subcontractor to finish the painting job, provided that all of the individuals performing the painting are employees of company Y, then the Law does not apply. However, if painting company X hires individuals as independent contractors to finish the painting job, then this would be a violation of prong two and a misclassification under the Law.

The AGO is cognizant that there are legitimate independent contractors and business-to-business relationships in the Commonwealth. These business relationships are important to the economic wellbeing of the Commonwealth and, provided that they are legitimate and fulfill their legal requirements, they will not be adversely impacted by enforcement of the Law. The difficulty arises when businesses are created and maintained in order to avoid the Law. The AGO will enforce the Law against entities that allow, request or contract with corporate entities such as LLCs or S corporations that exist for the purpose of avoiding the Law. In these situations, the AGO will consider, among other factors, whether: the services of the alleged independent contractor are not actually available to entities beyond the contracting entity, even if they purport to be so; whether the business of the contracting entity is no different than the services performed by the alleged independent contractor; or the alleged independent contractor is only a business requested or required to be so by the contracting entity.

In reviewing situations for misclassification, the AGO considers certain factors to be strong indications of misclassification that warrant further investigation and may result in enforcement. These include:

- Individuals providing services for an employer that are not reflected on the employer's business records;
- Individuals providing services who are paid "off the books", "under the table", in cash or provided no documents reflecting payment;
- Insufficient or no workers' compensation coverage exists;
- Individuals providing services are not provided 1099s or W-2s by any entity;

- The contracting entity provides equipment, tools and supplies to individuals or requires the purchase of such materials directly from the contracting entity; and
- Alleged independent contractors do not pay income taxes or employer contributions to the Division of Unemployment Assistance.

Since it is not feasible to address in this Advisory every situation that could occur and since each case involves its own set of facts, it should be recognized that each potential enforcement action shall be reviewed by the AGO on a case-by-case basis, consistent with the Law.

## B. Prong Two Guidelines

Due to the nature of prong two and the lack of judicial precedent, the AGO recognizes the complexity that prong two presents and the concerns regarding legitimate independent contractors, particularly among certain segments of the workforce

As discussed above, the AGO emphasizes that the initial question in determining whether the Law has been violated is whether an individual or individuals are classified other than as an employee. Only when an individual or individuals are classified other than as an employee will there be a determination of whether any of the prongs – including the complex prong two – are violated.

In *Athol Daily News*, the Court advised that no prong should be read so broadly as to render the other factors of the test superfluous. 439 Mass. at 180. Thus, prong two should not be construed to include all aspects of a business such that prongs one and three become unnecessary.

In its enforcement actions, the AGO will consider whether the service the individual is performing is necessary to the business of the employing unit or merely incidental in determining whether the individual may be properly classified as other than an employee under prong two.

Some examples of how the Attorney General will apply prong two<sup>4</sup>:

- A drywall company classifies an individual who is installing drywall as an independent contractor. This would be a violation of prong two because the individual installing the drywall is performing an essential part of the employer's business.
- A company in the business of providing motor vehicle appraisals classifies an individual appraiser as an independent contractor. This would be a violation of prong two because the appraiser is performing an essential part of the appraisal company's business.
- An accounting firm hires an individual to move office furniture. Prong two is not applicable (although prongs one and three may be) because the moving of furniture is incidental and not necessary to the accounting firm's business.

<sup>4</sup> In interpreting the Illinois independent contractor law, the Supreme Court of Illinois noted in *Carpeland USA, Inc v IL Dept. of Employment Security*, 201 Ill.2d 351, 386-88 (2002):

The washing of windows or mowing of grass for a business is incidental. But when one is in the business of selling a product, sales calls made by sales representatives are in the usual course of business because sales calls are necessary. When one is in the business of dispatching limousines, the services of chauffeurs are provided in the usual course of business because the act of driving is necessary to the business.

Although the Illinois statute is not the same as the Massachusetts statute, the court's analysis is useful for guidance on how the Attorney General will undertake prong two enforcement

#### **IV. CONCLUSION**

As this Advisory reflects, the AGO will carry out its enforcement responsibilities to serve the goals of the Law as articulated in the Introduction. The Law has been passed and amended over time to address serious abuses by various entities, and the AGO's goal is to prevent and remedy those practices without disrupting legitimate business activity.

**Appendix 6**

**Massachusetts Three-Prong Employee Definition Test and Questions &  
Answers Regarding Massachusetts Law**

**Massachusetts Chapter 149: Section 148B. Persons performing service not authorized under this chapter deemed employees; exception**

Section 148B. (a) For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless:—

**(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and**

**(2) the service is performed outside the usual course of the business of the employer; and,**

**(3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.**

(b) The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section.

(c) An individual's exercise of the option to secure workers' compensation insurance with a carrier as a sole proprietor or partnership pursuant to subsection (4) of section 1 of chapter 152 shall not be considered in making a determination under this section.

(d) Whoever fails to properly classify an individual as an employee according to this section and in so doing fails to comply, in any respect, with chapter 149, or section 1, 1A, 1B, 2B, 15 or 19 of chapter 151, or chapter 62B, shall be punished and shall be subject to all of the criminal and civil remedies, including debarment, as provided in section 27C of this chapter. Whoever fails to properly classify an individual as an employee according to this section and in so doing violates chapter 152 shall be punished as provided in section 14 of said chapter 152 and shall be subject to all of the civil remedies, including debarment, provided in section 27C of this chapter. Any entity and the president and treasurer of a corporation and any officer or agent having the management of the corporation or entity shall be liable for violations of this section.

(e) Nothing in this section shall limit the availability of other remedies at law or in equity.

## State of Massachusetts IC Law Questions and Answers

There is no case law at this time.

1. A general contractor that is building a house hires in a plumber to do the plumbing for the house. The plumber has no employees. The plumber only works by himself and does not carry worker's compensation insurance. How does the IC law treat the plumber? Is the plumber "outside the usual course of business of the general contractor"?

**Answer:** The plumber is a sole-proprietor and if he has no employees he is not an employee of the general contractor. If the plumber has employees he is not a sole-proprietor, he is an employer, then the plumber needs WC insurance.

2. Are any of the following occupations considered outside the usual course of business of a general contractor builder?

- ✓ Carpenter
- ✓ Drywaller
- ✓ Roofer
- ✓ Mason
- ✓ Electrician
- ✓ Plasterer
- ✓ Tile Setter
- ✓ Glazier
- ✓ Landscaper

**Answer:** They are outside the usual course of business of a general contractor builder if general contractor brings them in separately.

If the general contractor is a drywaller himself and hires drywallers, the drywallers are employees. They are considered the general contractor's employees and WC insurance is required.

3. If a drywaller needs additional help to finish a job and sub-contracts with another drywaller and the sub-contractor does not have a worker's compensation policy, how does the IC law treat the sub-contracted drywaller?

**Answer:** The sub-contracted drywaller is an employee of the drywaller.

4. If a drywaller need additional help to finish a job and sub-contracts with another drywaller and the sub-contractor has a worker's compensation policy, how does the IC law treat the sub-contracted drywaller?

**Answer:** If all have WC insurance, all is okay, there is no violation.

5. If both the contractor and a sub-contracted have worker's compensation policies does the IC test still come into play at all?

**Answer:** For WC law, it does not.

6. Assume that an individual who is referred to as a "freelance" writer enters into a contract to provide an article of a designated number of column inches to a specific publication and that the writer is to be compensated in a set amount for his/her work. The writer performs the services using a computer in his/her home and all communications regarding the work are via e-mail. If it is assumed for the sake of argument that prongs A and C of the "ABC" test are satisfied, will the writer be considered an employee of the publication if it is determined that the services of the writer were not "outside the usual course of the business" of the publication?

**Answer:** The writer is an employee of the publication.

7. What do you look for to determine the legitimacy of a business-to-business relationship.

**Answer:** All Massachusetts businesses must obtain a business certificate to operate. Look for Corporation filing with Secretary of State or business certification filed with local clerk. If not legally registered as a business, they are employees.

If business is certified then parts 1 & 2 of test are looked at. Must meet all 3.

8. Have you developed interpretation guidelines for investigators outlining how the law is to be applied? If yes, can you provide a copy?

**Answer:** Guideline is the attorney general opinion. Decisions can be appealed to a department hearing office.

9. Has the 3 prong IC test eased or complicated the investigation process? How?

**Answer;** Eased it dramatically. 20 point test is gone. Burden is on the employer to demonstrate that there is a true IC situation. And eliminates 1099 questions.

10. What are the major issues that have arisen during the implementation of the 3 prong IC test? (complaints, questions, interpretation, misunderstanding, litigation, education etc.)

**Answer:** Education and publicity is key.

SWO process raised concerns and awareness. If no WC, SWO is issued until they are in compliance. \$100 per day for fine. Employer can appeal on the site and the order is put in abeyance, and they may continue to work. Hearing is held within 14 days. If they lose at appeal, the penalty is \$250 per day and is retroactive going back to the original date.

The employer can withdraw their appeal <sup>if they come into compliance</sup> and receive the \$100 per day penalty.

11. Regarding stop work orders. If there are 5 contractors working on a job site and you find 4 have worker's compensation insurance and 1 does not and is found in violation of the law, is the entire worksite shut down or is only the non-complaint contractor ordered to stop working?

**Answer;** Only the person in violation. All other compliant businesses continue working.

12. What has been Massachusetts's experience with the provision allowing a private cause of action for any person or firm that loses a competitive bid for a contract?

**Answer:** Allowed under statute, if it has occurred they are not aware of it. See Massachusetts law 152.25c.

13. What kinds of numbers have you seen for Stop-work-orders? For appeals? Court cases?

**Answer:** Issued 355 last month (12 Investigators), estimated 90% are appealed. 3 or 4 hearings last month. 0 to circuit court. Majority appeal to continue working and then come into compliance and withdraw the appeal.

14. How do you follow up on the employees getting paid for 10 days? Any enforcement for this?

**Answer:** When SWO is issued the employer is told they must continue to pay employees, if they appeal, they can continue to work. Employee's are told on the work site that wages must continue for 10 days. There have not been any none payment of wage issues raised by employees. If wages are not paid, case is sent to AG for handling.

15. When does an employer required to have WC coverage in Massachusetts?

**Answer:** If an employer has one employee, the employer is required to have insurance.

16. Do you share data with the MA Unemployment Division and the MA Department of Revenue?

**Answer:** No direct data exchange with UI or DOR, but they share information on cases.

**MA has a Joint Taskforce on the Underground Economy, 18 agencies meet weekly, have a referral line for any labor law violation.**

**All referrals are entered into a tracking system. All 18 agencies have access to the tracking system, all agencies enter information whether the case is an issue or not an issue for their agency.**

**Every Wednesday the agencies meet to go over major cases.**

**Joint action strike team, target a company or industry and bring 7 or 8 agency's staff in at once and review all aspects of regulatory compliance.**

**If SWO is issued, the employer is placed on the State debarment list for 3 years, and can not enter into contract with State of Massachusetts or any Massachusetts municipality.**

**Finally, they indicated the publicity is needed to get the word out. A lot of voluntary compliance can be obtained through publicizing strike team results.**



State of Wisconsin  
2009 - 2010 LEGISLATURE

In <sup>Sunday</sup> 3/28 2:30 pm

Went Tues 3/30

PI  
LRB-4432/?

GMM&JTK:.....

Ljk

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA  
X-ref

1 AN ACT <sup>gen.</sup> ...; relating to: compliance by employers with certain laws whose  
2 enforcement depends on the proper classification of persons as employees or  
3 nonemployees and providing penalties.

***Analysis by the Legislative Reference Bureau***

Under current law, an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects (employer) who misclassifies an employee as a nonemployee willfully and with intent to evade any requirements of the laws relating to worker's compensation or unemployment insurance is subject to a \$25,000 fine for each violation.

This bill requires the Department of Workforce Development (DWD), for purposes of promoting and achieving compliance by employers with certain employment laws through the proper classification of persons performing services for an employer as employees and nonemployees, to do all of the following:

1. Educate employers, employees, nonemployees, and the public about the proper classification of persons performing services for an employer as employees and nonemployees.

2. Refer complaints of misclassification of employees as nonemployees to other state or local agencies that administer laws whose enforcement depends on the proper classification of employees and cooperate with those state or local agencies in the investigation and enforcement of those laws.

The bill also requires DWD, for purposes of ensuring that an employer is properly classifying the persons performing services for the employer as employees

and nonemployees, to investigate allegations that an employer is in violation of certain requirements under the employment laws. Those requirements (employment law requirements) are as follows:

1. That the employer is maintaining records identifying all persons performing work for the employer, including the name, address, and social security number of each of those persons.
2. That the ~~the~~ employer is maintaining worker's compensation coverage for its employees as required under the worker's compensation law.
3. That the employer has provided to DWD the information that employers are required to provide with respect to newly hired employees.
4. That the employer is maintaining records of the hours worked by its employees, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated by DWD relating to hours of labor and the minimum wage.
5. That the ~~the~~ employer is listing deductions from wages as required under current law.
6. That the employer is in compliance with the unemployment insurance laws.

If DWD determines that an employer has failed to demonstrate compliance with the employment law requirements, DWD may serve on the employer a notice of DWD's intent to issue an order requiring the employer to stop work (stop work order) at the locations specified in the notice. The notice must advise the employer that the stop work order will be issued within three business days after the date of the order unless the employer provides information satisfactory to DWD indicating that the employer is in compliance with the employment law requirements at each location specified in the notice.

If within three business days after service of the notice an employer does not demonstrate compliance with the employment law requirements, DWD may serve a stop work order on the employer, which takes effect immediately unless the employer requests a hearing on the stop work order, in which case the stop work order is automatically stayed until the date of the hearing. An employer that does not immediately stop work as required under a stop work order may be required to forfeit \$250 for each day beginning on the day on which the stop work order is served and ending on the day on which the employer stops work or provides evidence satisfactory to DWD that it is in compliance with the employment law requirements, ~~which~~ occurs first. The stop work order remains in effect until the employer provides evidence satisfactory to DWD that it is in compliance with the employment law requirements and pays the forfeiture required under the bill.

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A request for a hearing to review a stop work order must be filed within 10 days after service of the order. If a request for a hearing is filed within those 10 days, an appeal tribunal, which is an attorney licensed to practice in this state who is appointed by DWD to conduct review hearings, must hold the hearing within 14 days after receipt of the request and issue a decision in writing within seven days after the hearing affirming, reversing, or modifying the order to stop work and forfeiture. If the appeal tribunal finds that the employer has not complied with the employment law requirements, the automatic stay of the stop work order is lifted and the order

remains in effect until the employer provides evidence satisfactory to DWD that the employer is in compliance with the employment law requirements and pays the forfeiture. A forfeiture affirmed by an appeal tribunal accrues from the first day on which the employer was not in compliance with the employment law requirements, as determined by the appeal tribunal, or the day on which the stop work order is served, whichever is earlier, and ending on the day on which the employer stops work or provides evidence satisfactory to DWD that it is in compliance with the employment law requirements, whichever occurs first.

The employer or DWD may request a review of an appeal tribunal's decision by petitioning the Labor and Industry Review Commission (LIRC) for review of the decision within 21 days after the decision was mailed to the employer's last-known address and may commence an action for the judicial review of a decision of LIRC within 30 days after the decision was mailed to the employer's last-known address. A stop work order that is in effect remains in effect during the pendency of a review by LIRC or an action for judicial review. An employer that violates a final stop work order of DWD or final decision of an appeal tribunal, LIRC, or a court affirming such an order is subject to a forfeiture of \$1,000 for each day of violation. An employer may seek review of a forfeiture imposed for a violation of a final stop work order or final decision affirming such an order in the same manner as an initial stop work order is reviewed under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 1           **SECTION 1.** 103.06 of the statutes is created to read:
- 2           **103.06 Worker classification compliance. (1) DEFINITIONS.** In this section:
- 3           (a) "Employee" means an employee of any of the following employers that is
- 4 engaged in the work described in s. 108.18 (2) (c):
- 5           1. For purposes of compliance with the requirement specified in sub. (3) (a) 1.
- 6 and 5., an employer, as defined in s. 103.001 (6).
- 7           2. For purposes of compliance with the requirement specified in sub. (3) (a) 2.,
- 8 an employer, as defined in s. 102.04.
- 9           3. For purposes of compliance with the requirement specified in sub. (3) (a) 3.,
- 10 an employer, as defined in rules promulgated under s. 103.05.

**SECTION 1**

1           4. For purposes of maintaining records under sub. (3) (a) 4. as required under  
2 rules promulgated under s. 103.02, an employer, as defined in s. 103.01 (1).

3           5. For purposes of maintaining records under sub. (3) (a) 4. as required under  
4 rules promulgated under s. 104.04, an employer, as defined in s. 104.01 (3).

5           6. For purposes of compliance with the requirement specified in sub. (3) (a) 6.,  
6 an employer, as defined in s. 108.02 (13).

7           (b) "Employer" means any of the following that is engaged in the work described  
8 in s. 108.18 (2) (c):

9           1. For purposes of compliance with the requirement specified in sub. (3) (a) 1.  
10 and 5., an employer, as defined in s. 103.001 (6).

11           2. For purposes of compliance with the requirement specified in sub. (3) (a) 2.,  
12 an employer, as defined in s. 102.04.

13           3. For purposes of compliance with the requirement specified in sub. (3) (a) 3.,  
14 an employer, as defined in rules promulgated under s. 103.05.

15           4. For purposes of maintaining records under sub. (3) (a) 4. as required under  
16 rules promulgated under s. 103.02, an employer, as defined in s. 103.01 (1).

17           5. For purposes of maintaining records under sub. (3) (a) 4. as required under  
18 rules promulgated under s. 104.04, an employer, as defined in s. 104.01 (3).

19           6. For purposes of compliance with the requirement specified in sub. (3) (a) 6.,  
20 an employer, as defined in s. 108.02 (13).

21           **(2) WORKER CLASSIFICATION COMPLIANCE; DUTIES OF DEPARTMENT.** For purposes of  
22 promoting and achieving compliance by employers with the laws specified in sub. (3)  
23 (a) through the proper classification of persons performing services for an employer  
24 as employees and nonemployees, the department shall do all of the following:

1 (a) Educate employers, employees, nonemployees, and the public about the  
2 proper classification of persons performing services for an employer as employees  
3 and nonemployees.

4 (b) Receive and investigate complaints alleging violations of the requirements  
5 specified in sub. (3) (a), or investigate any such alleged violations on its own  
6 initiative, and, if the department finds that an employer is in violation of a  
7 requirement specified in sub. (3) (a), order the employer to stop work and pay a  
8 forfeiture as provided under sub. (5).

9 (c) Refer complaints of misclassification of employees as nonemployees to other  
10 state or local agencies that administer laws whose enforcement depends on the  
11 proper classification of employees.

12 (d) Cooperate with other state or local agencies in the investigation and  
13 enforcement of laws whose enforcement depends on the proper classification of  
14 employees and of s. 101.147 relating to the registration of contractors.

15 (e) Appoint attorneys licensed to practice in this state as appeal tribunals to  
16 conduct hearings and issue decisions under sub. (6) (b).

17 **(3) COMPLIANCE REQUIREMENTS.** (a) For purposes of ensuring that an employer  
18 is properly classifying the persons performing services for the employer as employees  
19 and nonemployees, the department may require an employer to prove all of the  
20 following:

21 1. That the employer is maintaining records identifying all persons performing  
22 work for the employer, including the name, address, and social security number of  
23 each of those persons.

24 2. That the ~~the~~ employer is maintaining worker's compensation coverage for  
25 its employees as required under s. 102.28 (2).

1           3. That the employer has provided to the department the information required  
2 under s. 103.05 with respect to each newly hired employee of the employer.

3           4. That the employer is maintaining records of the hours worked by its  
4 employees, the wages paid to those employees, any deductions from those wages, and  
5 any other information that the employer is required to keep under rules promulgated  
6 under s. 103.02 or 104.04.

7           5. That the <sup>e</sup>the employer is listing deductions from wages as required under s.  
8 103.457.

9           6. That the employer is in compliance with ch. 108.

10           (b) Any agreement between an employer and employee purporting to waive or  
11 modify any requirement under par. (a) is void.

12           (4) COMPLIANCE INVESTIGATIONS. (a) The department may conduct  
13 investigations to ensure compliance with the requirements specified in sub. (3)(a).  
14 In conducting an investigation, the department may do any of the following:

15           1. Enter and inspect any place of business or place of employment and examine  
16 and copy any records that the employer is required to keep under rules promulgated  
17 under s. 103.02 or 104.04 and any other books, registers, payroll records, records of  
18 wage withholdings, records of work activity and hours of work, and records or indicia  
19 of the employment status of persons performing work for the employer.

20           2. Determine the identity and activities of any person performing work at any  
21 place of business or place of employment.

22           3. Interview and obtain statements in writing from any employer or person  
23 performing work or present at a place of business or place of employment with  
24 respect to the names and address of persons performing work for the employer, the  
25 payment of wages and hours worked by those persons, and any other information

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1 relating to the remuneration of those persons and the nature and extent of services  
2 performed by those persons.

3 (b) The department may conduct the activities under par. (a) at any location  
4 where the work described in s. 108.18 (2) (c) is performed by or for an employer or  
5 at any other location where the records specified in par. (a) 1. are maintained by an  
6 employer or an agent of an employer.

7 (c) If in the course of an investigation of an employer the department  
8 determines that there is reason to believe that the employer is not the prime  
9 contractor of the work being performed by or for the employer, the department shall  
10 seek to determine the identity of the prime contractor. If the department identifies  
11 any person other than the employer that it believes to be the prime contractor of the  
12 work being performed, the department, for informational purposes, shall serve on  
13 that person copies of any notices or orders served on the employer under sub. (5) with  
14 respect to the work. Failure of the department to serve a copy of a notice or order  
15 under sub. (5) on a person believed to be a prime contractor does not relieve the  
16 employer from any liability arising out of the notice or order or impair the  
17 department from pursuing any remedy relating to the notice or order.

18 (5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) If after an investigation under  
19 sub. (4) the department determines that an employer has failed to demonstrate  
20 compliance with any of the requirements specified in sub. (3) (a), the department  
21 may serve on the employer a notice of the department's intent to issue an order  
22 requiring the employer to stop work at the locations specified in the notice. The  
23 notice shall advise the employer that the order will be issued within 3 business days,  
24 as defined in s. 421.301 (6), after the date of the order unless within those 3 business  
25 days the employer provides information satisfactory to the department indicating

1 that the employer is in compliance with the requirements specified in sub. (3) (a) at  
2 each location specified in the notice.

3 (b) If within 3 business days after service of a notice under par. (a) an employer  
4 does not demonstrate compliance with the requirements listed under sub. (3) (a) with  
5 respect to a location specified in the notice, the department may serve an order on  
6 the employer requiring the employer to stop work at the locations specified in the  
7 order. The order shall advise the employer that the employer may request a hearing  
8 on the order under sub. (6) (a), describe how the employer may request a hearing, and  
9 be accompanied by a form for requesting a hearing. The order shall take effect  
10 immediately upon its service on the employer and shall remain in effect until the  
11 employer provides evidence satisfactory to the department that it is in compliance  
12 with the requirements under sub. (3) (a) and pays the forfeiture under par. (c).

13 (c) An employer that does not immediately stop work as required under an  
14 order under par. (b) may be required to forfeit \$250 for each day beginning on the day  
15 on which the order is served and ending on the day on which the employer stops work  
16 as required under the order or provides evidence satisfactory to the department that  
17 it is in compliance with sub. (3) (a), which <sup>ever</sup> occurs first.

18 (d) An action taken under this subsection is final unless appealed under sub.  
19 (6). An action taken under this subsection is subject to review only as provided in  
20 sub. (6) and not as provided in ch. 227.

21 **(6) APPEAL OF STOP WORK ORDER AND CIVIL PENALTY.** (a) Any employer that is  
22 aggrieved by an order to stop work under sub. (5) (b) may appeal the order by filing  
23 with the department a written request for a hearing to review the order within 10  
24 days after service of the order. If a request for a hearing is filed within those 10 days,  
25 the department shall hold the hearing within 14 days after receipt of the request.

1 The order to stop work shall be automatically stayed from the filing of the request  
2 for a hearing until the date of the hearing. Notwithstanding the stay of the order to  
3 stop work, the forfeiture under sub. (5) (c) shall continue to accrue as provided in sub.  
4 (5) (c).

5 (b) 1. The hearing shall be held before an appeal tribunal and shall be  
6 conducted in the manner described in s. 108.09 (5). Within 7 days after the hearing,  
7 the appeal tribunal shall issue a decision in writing affirming, reversing, or  
8 modifying the order to stop work and forfeiture.

9 2. If the appeal tribunal finds that the employer has at all times been  
10 compliance with the requirements specified in sub. (3) (a), the appeal tribunal shall  
11 reverse the order to stop work and forfeiture.

12 3. If the appeal tribunal finds that the employer has not complied with the  
13 requirements specified in sub. (3) (a), the automatic stay under par. (a) shall be lifted  
14 and the order to stop work shall remain in effect until the employer provides evidence  
15 satisfactory to the department that the employer is in compliance with the  
16 requirements specified in sub. (3) (a) and pays the forfeiture under sub. (5) (c).

17 4. A forfeiture affirmed by an appeal tribunal shall accrue from the first day  
18 on which the employer was not in compliance with the requirements under sub. (3)  
19 (a), as determined by the appeal tribunal, or the day on which the order to stop work  
20 is served, whichever is earlier, and ending on the day on which the employer stops  
21 work as required under the order or provides evidence satisfactory to the department  
22 that it is in compliance with sub. (3) (a), whichever occurs first.

23 5. A decision of an appeal tribunal under this paragraph is final unless a review  
24 of the decision is requested under par. (c). A decision of an appeal tribunal under this

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1 paragraph is subject to review only as provided in par. (c) and not as provided in ch.  
2 227.

3 (c) The employer or the department may request a review of an appeal  
4 tribunal's decision by petitioning the commission for review of the decision within 21  
5 days after the decision was mailed to the employer's last-known address. The  
6 commission shall conduct the review in the manner described in s. 108.09 (6). An  
7 order to stop work that is in effect under par. (b) 3. shall remain in effect as provided  
8 in par. (b) 3. during the pendency of a review under this paragraph. A decision of the  
9 commission under this paragraph is final and the provisions of s. 108.10 (6) and (7)  
10 shall apply to the decision unless judicial review of the decision is requested under  
11 par. (d). A decision of the commission under this paragraph is subject to judicial  
12 review only as provided in par. (d) and not as provided in ch. 227.

13 (d) The employer or the department may commence an action for the judicial  
14 review of a decision of the commission under par. (c) within 30 days after the decision  
15 was mailed to the employer's last-known address. The scope of judicial review under  
16 this paragraph, and the manner of that review insofar as is applicable, shall be the  
17 same as that provided in s. 108.09 (7). An order to stop work that is in effect under  
18 par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a  
19 review under this paragraph.

20 (e) In addition to any forfeiture for which the employer may be liable under sub.  
21 (5) (c) and any other penalty for which the employer may be liable for a violation of  
22 a requirement specified in sub. (3) (a), any employer that violates a final order to stop  
23 work of the department under sub. (5) (b) or final decision of an appeal tribunal, the  
24 commission, or a court affirming such an order under par. (b), (c), or (d) is subject to  
25 a forfeiture of \$1,000 for each day of violation. An employer may seek review of

1 forfeiture imposed under this paragraph in the same manner as an order to stop work  
2 is reviewed under pars. (a) to (d).

3 (7) RECOVERY OF UNPAID FORFEITURES. (a) If an employer fails to pay a forfeiture  
4 imposed under sub. (5) (c) or (6) (e), the department has a perfected lien upon the  
5 employer's right, title, and interest in all of its real and personal property located in  
6 this state in the amount finally determined to be owed, plus costs. Except when  
7 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien  
8 is effective when the stop work order or decision affirming the stop work order  
9 becomes final and shall continue until the amount owed, plus costs and interest to  
10 the date of payment, is paid. The employer shall pay interest on the amount owed  
11 at the rate of <sup>1</sup>one percent per month or fraction of a month from the date on which  
12 the amount became due. If a lien is initially barred or stayed by bankruptcy or other  
13 insolvency law, the lien shall become effective immediately upon expiration or  
14 removal of the bar or stay. The perfected <sup>lien</sup> ~~SA~~ does not give the department priority  
15 over any lienholders, mortgagees, purchasers for value, judgment creditors, or  
16 pledges whose interests have been recorded before the lien of the department is  
17 recorded.

18 (b) 1. If an employer fails to pay to the department any amount found to be due  
19 the department in proceedings under this section and if no proceeding for review is  
20 pending and the time for taking an appeal or review has expired, the department or  
21 any authorized representative of the department may issue a warrant directed to the  
22 clerk of circuit court for any county of the state. The clerk of circuit court shall enter  
23 in the judgment and lien docket the name of the employer mention in the warrant  
24 and the amount of the forfeiture, interest, costs, and other fees for which the warrant  
25 is issued and the date when the warrant is entered. A warrant so entered shall be

**SECTION 1**

1 considered in all respect to be a final judgment constituting a perfected lien upon the  
2 employer's right, title, and interest in all real and personal property located in the  
3 county where the warrant is entered. The lien is effective when the department  
4 issues the warrant and shall continue until the amount owed, including interest,  
5 costs, and other fees to the date of payment, is paid. After a warrant is entered in  
6 the judgment and lien docket, the department or any authorized representative of  
7 the department may file an execution with the clerk of circuit court for filing by the  
8 clerk of circuit court with the sheriff of any county where real or personal property  
9 of the employer is found, commanding the sheriff to levy upon and sell sufficient real  
10 and personal property of the employer to pay the amount stated in the warrant in  
11 the same manner as upon an execution against property issued upon the judgment  
12 of a court of record, and to return the warrant of the department and pay to the  
13 department the money collected by virtue of the execution within 60 days after  
14 receipt of the warrant.

15 2. The clerk of circuit court shall accept, file, and enter each warrant,  
16 satisfaction, release, or withdrawal under this subsection in the judgment and lien  
17 docket without prepayment of any fee, but the clerk of circuit court shall submit a  
18 statement of the proper fee semiannually to the department covering the period from  
19 January 1 to June 30 and July 1 to December 31 unless a different billing period is  
20 agreed to between the clerk of circuit court and the department. The fees shall then  
21 be paid by the department, but the fees provided by s. 814.61 (5) for entering the  
22 warrants shall be added to the amount of the warrant and collected from the  
23 employer when satisfaction or release is presented for entry.

24 (c) When the penalties set forth in a warrant together with interest and other  
25 fees to the date of payment and all costs due the department have been paid to the

1 department, the department shall issue a satisfaction of the warrant and file that  
2 satisfaction with the clerk of circuit court. The clerk of circuit court shall  
3 immediately enter a satisfaction of the judgment on the judgment and lien docket.  
4 The department shall send a copy of the satisfaction to the employer.

5 (d) If the department finds that the interests of the state will not be jeopardized,  
6 the department, upon such conditions as it may exact, may issue a release of any  
7 warrant with respect to any real or personal property upon which the warrant is a  
8 lien or color upon title. The clerk of the circuit court shall enter the release upon  
9 presentation of the release to the clerk and payment of the fee for filing the release  
10 and the release shall be conclusive proof that the lien or cloud upon the title of the  
11 property covered by the release is extinguished.

12 (e) If the department issues an erroneous warrant, the department shall issue  
13 a notice of withdrawal of the warrant to the clerk of circuit court for the county in  
14 which the warrant is filed. The clerk shall void the warrant and any liens attached  
15 by the warrant.

16 **(8) LEVY FOR DELINQUENT FORFEITURES.** If any employer who is liable for any  
17 forfeiture under sub. (5) (c) or (6) (e) neglects or refuses to pay that forfeiture after  
18 the department has made demand for payment, the department may collect that  
19 forfeiture and expenses of the levy by levy upon any property belonging to the  
20 employer. Section 108.225 applies to a levy under this subsection except as follows:

21 (a) For purposes of a levy under this subsection, "debt" as used in s. 108.225  
22 means a delinquent forfeiture under sub. (5) (c) or (6) (e) or any liability of a 3rd party  
23 for failure to surrender to the department property or rights to property subject to  
24 levy after proceedings under ss. 108.10 and 108.225 to determine that liability.



## Malaise, Gordon

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**From:** LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]  
**Sent:** Tuesday, March 30, 2010 6:35 PM  
**To:** Malaise, Gordon  
**Cc:** Kuesel, Jeffery; Schwalbe, Tracey L - DWD  
**Subject:** RE: Worker Classification Draft

Gordon,  
Thanks for the work. There is much that is improved in this draft.

I understand Sen Wirch would like a sign that the bill draft looks good. I have a few issues, especially:

1. Whether it is really necessary to define "employer" given that we define "employee". I would have thought that the substantive requirements of the various statutes referenced in this bill would necessarily import the respective statutory definitions of "employer" without need to define them in the bill . . . But perhaps not. Maybe it is better.

2. Your sub sub. (4)(b) differs from what was intended. That provision was intended to differentiate the activities done at a construction site from those at other places of business, so that at the latter only record inspection would occur. We need to avoid the implication that a full investigation is going on at places that are not construction work sites. And that only construction workers are within the scope of investigation. See last draft. *= Separate out*

2. Our draft sub. (7)<sup>(b)</sup> has been dropped. It would assure that other proceedings and orders under other laws and rules are not precluded by an order or decision under this bill.

We would like to talk with you and Jeff if at all possible tomorrow. As it appears now, I am available all day except 3 to 4 pm.

Dan

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**From:** Malaise, Gordon [mailto:Gordon.Malaise@legis.wisconsin.gov]  
**Sent:** Tuesday, March 30, 2010 1:03 PM  
**To:** LaRocque, Daniel J - DWD  
**Cc:** Kuesel, Jeffery - LEGIS  
**Subject:** Worker Classification Draft

<< File: 09-4432/P1.pdf >>

Dan:

Attached is a /P1 version of the worker classification draft. Jeff will be back tomorrow. I'm sure that after you and Jeff have had a chance to review the draft you will want some changes, hence the /P1 version.

If you have any questions about the draft, please do not hesitate to contact me by e-mail or by phone at 6-9738. I would also be happy to meet with you if more extensive discussion is necessary.

Gordon

Orders and decisions issued under this section shall not preclude or otherwise affect obligations for payments, reimbursements, assessments or surcharges, civil, criminal and administrative proceedings, decisions, orders, remedies, forfeitures, and penalties under administrative rules or provisions of law other than this section.

## Malaise, Gordon

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**From:** LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]  
**Sent:** Wednesday, March 31, 2010 11:34 AM  
**To:** Malaise, Gordon; Kuesel, Jeffery  
**Cc:** Schwalbe, Tracey L - DWD  
**Subject:** Worker classification bill - Chart summarizing defintions and authority

**Attachments:** Worker Classification Compliance Legislation chart of laws and rules 033110.doc

This may be helpful to discussion and further drafting:



Worker  
Classification Compliar

### Worker Classification Compliance Legislation

<b>§103.06</b>	<b>"Employer"</b>	<b>"Employee"</b>	<b>Statutory Authority</b>	<b>Rule Authority</b>	<b>Ultimate Purpose</b>
(3)(a)1. – Maintain identifying records	103.001(6)	103.001(5)	Various		Basic – identify worker
(3)(a)2. – Maintain WC coverage	102.04	102.07	108.28(2)		WC insurance for injured workers
(3)(a)3. – Report new hires	Rules under 103.05	<del>103.001(5)</del> § 103.05 S. 103.05	103.05		Child support administrative: cross match for UI obligations
(3)(a)4. – Maintain records of hours worked, wages paid, deductions from wages and other info required by rules under §103.02 or §104.04	104.01(3) (With regard to rules under 104.04) 103.01 (With regard to rules under 103.02)	104.01 (2) 103.001(5)	104.04 103.02	DWD 272.10 DWD 272.11 DWD 274.06	Minimum wage Child labor Hours and overtime
(3)(a)5. – List deductions from wages	103.001(6)	103.001(5)	103.457		Inform and assure workers
(3)(a)6. – Comply with UI law	108.02(13)	108.02(12)	Chapter 108		Unemployment insurance contributions paid to reserve fund



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4432  
GMM&JTK:bjk:md

g  
OK  
stays

In 3/31 4:15pm  
Wanted 411 11:20pm

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

SA  
X-ref  
Inserts

Regenerate

- 1 AN ACT to create 103.06 of the statutes; relating to: compliance by employers
- 2 with certain laws whose enforcement depends on the proper classification of
- 3 persons as employees or nonemployees and providing penalties.

***Analysis by the Legislative Reference Bureau***

Under current law, an employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects (employer) who misclassifies an employee as a nonemployee willfully and with intent to evade any requirements of the laws relating to worker's compensation or unemployment insurance is subject to a \$25,000 fine for each violation.

This bill requires the Department of Workforce Development (DWD), for purposes of promoting and achieving compliance by employers with certain employment laws through the proper classification of persons performing services for an employer as employees and nonemployees, to do all of the following:

1. Educate employers, employees, nonemployees, and the public about the proper classification of persons performing services for an employer as employees and nonemployees.
2. Refer complaints of misclassification of employees as nonemployees to other state or local agencies that administer laws whose enforcement depends on the proper classification of employees and cooperate with those state or local agencies in the investigation and enforcement of those laws.

The bill also ~~requires~~ DWD, for purposes of ensuring that an employer is properly classifying the persons performing services for the employer as employees

→  
permits

and nonemployees, to investigate allegations that an employer is in violation of certain requirements under the employment laws. Those requirements (employment law requirements) are as follows:

1. That the employer is maintaining records identifying all persons performing work for the employer, including the name, address, and social security number of each of those persons.

2. That the employer is maintaining worker's compensation coverage for its employees as required under the worker's compensation law.

3. That the employer has provided to DWD the information that employers are required to provide with respect to newly hired employees.

4. That the employer is maintaining records of the hours worked by its employees, the wages paid to those employees, any deductions from those wages, and any other information that the employer is required to keep under rules promulgated by DWD relating to hours of labor and the minimum wages <sup>← stays</sup>

5. ~~That the employer~~ is listing deductions from wages as required under current law.

6. That the employer is in compliance with the unemployment insurance laws.

If DWD determines that an employer has failed to demonstrate compliance with the employment law requirements, DWD may serve on the employer a notice of DWD's intent to issue an order requiring the employer to stop work (stop work order) at the locations specified in the notice. The notice must advise the employer that the stop work order will be issued within three business days after the date of the order unless the employer provides information satisfactory to DWD indicating that the employer is in compliance with the employment law requirements at each location specified in the notice.

If within three business days after service of the notice an employer does not demonstrate compliance with the employment law requirements, DWD may serve a stop work order on the employer, which takes effect <sup>as provided in the order</sup> ~~immediately~~ unless the employer requests a hearing on the stop work order, in which case the stop work order is automatically stayed until the date of the hearing. An employer that does not ~~immediately~~ stop work as required under a stop work order may be required to forfeit \$250 for each day beginning on the day on which the stop work order is served and ending on the day on which the employer stops work or provides evidence satisfactory to DWD that it is in compliance with the employment law requirements, whichever occurs first. The stop work order remains in effect until the employer provides evidence satisfactory to DWD that it is in compliance with the employment law requirements and pays the forfeiture required under the bill.

A request for a hearing to review a stop work order must be filed within ten days after service of the order. If a request for a hearing is filed within those ten days, an appeal tribunal, which is an attorney licensed to practice in this state who is appointed by DWD to conduct review hearings, must hold the hearing within 14 days after receipt of the request and issue a decision in writing within seven days after the hearing affirming, reversing, or modifying the order to stop work and forfeiture. If the appeal tribunal finds that the employer has not complied with the employment law requirements, the automatic stay of the stop work order is lifted and the order

Handwritten annotations: "NO" with a circled "5" and "and" with a circled "9" pointing to the 5th and 6th items of the list.

Handwritten annotation: "as provided in the order" circled and pointing to the word "immediately" in the text.

remains in effect until the employer provides evidence satisfactory to DWD that the employer is in compliance with the employment law requirements and pays the forfeiture. ~~A forfeiture affirmed by an appeal tribunal accrues from the first day on which the employer was not in compliance with the employment law requirements, as determined by the appeal tribunal, or the day on which the stop work order is served, whichever is earlier, and ending on the day on which the employer stops work or provides evidence satisfactory to DWD that it is in compliance with the employment law requirements, whichever occurs first.~~

The employer or DWD may request a review of an appeal tribunal's decision by petitioning the Labor and Industry Review Commission (LIRC) for review of the decision within 21 days after the decision was mailed to the employer's last-known address and may commence an action for the judicial review of a decision of LIRC within 30 days after the decision was mailed to the employer's last-known address. A stop work order that is in effect remains in effect during the pendency of a review by LIRC or an action for judicial review. An employer that violates a final stop work order of DWD or final decision of an appeal tribunal, LIRC, or a court affirming such an order is subject to a forfeiture of \$1,000 for each day of violation. An employer may seek review of a forfeiture imposed for a violation of a final stop work order or final decision affirming such an order in the same manner as an initial stop work order is reviewed under the bill.

Insert  
A

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

Insert  
3-1

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

Insert  
3-2

SECTION 1. 103.06 of the statutes is created to read:

**103.06 Worker classification compliance.** (1) DEFINITIONS. In this section:

(a) "Employee" means ~~an employee of~~ any of the following ~~employers that~~ <sup>who</sup> is ~~engaged in the work described in s. 708.18(2)(d)~~ <sup>employed by an employer</sup>

1. For purposes of compliance with the requirement specified in sub. (3) (a) 1.

~~and by an employer~~ <sup>stays</sup> as defined in s. 103.001 <sup>(5)</sup>

2. For purposes of compliance with the requirement specified in sub. (3) (a) 2.,

an ~~employee~~ <sup>employee</sup>, as defined in s. ~~102.01~~ <sup>102.07</sup>

3. For purposes of compliance with the requirement specified in sub. (3) (a) 3.,

an ~~employee~~ <sup>employee</sup> as defined in rules promulgated under s. 103.05.

x3  
employee

1 4. For purposes of maintaining records under sub. (3) (a) 4. as required under  
2 rules promulgated under s. 103.02, an ~~employee~~ as defined in s. ~~103.01 (4)~~ 103.001 (5)

3 5. For purposes of maintaining records under sub. (3) (a) 4. as required under  
4 rules promulgated under s. 104.04, an ~~employee~~ as defined in s. 104.01 (2)

5 7. For purposes of compliance with the requirement specified in sub. (3) (a) (5)  
6 an ~~employee~~ as defined in s. 108.02 (12)

7 (c) "Employer" means any of the following that is engaged in the work described  
8 in s. 108.18 (2) (c):

9 1. For purposes of compliance with the requirement specified in sub. (3) (a) 1.  
10 ~~and~~ an employer, as defined in s. 103.001 (6).

11 2. For purposes of compliance with the requirement specified in sub. (3) (a) 2.,  
12 an employer, as defined in s. 102.04.

13 3. For purposes of compliance with the requirement specified in sub. (3) (a) 3.,  
14 an employer, as defined in rules promulgated under s. 103.05.

15 4. For purposes of maintaining records under sub. (3) (a) 4. as required under  
16 rules promulgated under s. 103.02, an employer, as defined in s. 103.01 (1).

17 5. For purposes of maintaining records under sub. (3) (a) 4. as required under  
18 rules promulgated under s. 104.04, an employer, as defined in s. 104.01 (3).

19 7. For purposes of compliance with the requirement specified in sub. (3) (a) (5),  
20 an employer, as defined in s. 108.02 (13).

21 (2) WORKER CLASSIFICATION COMPLIANCE; DUTIES OF DEPARTMENT. For purposes of  
22 promoting and achieving compliance by employers with the laws specified in sub. (3)  
23 (a) through the proper classification of persons performing services for an employer  
24 as employees and nonemployees, the department shall do all of the following:

x3  
Employee  
Insert  
4-4

Insert  
4-18

1 (a) Educate employers, employees, nonemployees, and the public about the  
2 proper classification of persons performing services for an employer as employees  
3 and nonemployees.

4 (b) Receive and investigate complaints alleging violations of the requirements  
5 specified in sub. (3) (a), or investigate any such alleged violations on its own  
6 initiative, and, if the department finds that an employer is in violation of a  
7 requirement specified in sub. (3) (a), order the employer to stop work and pay a  
8 forfeiture as provided under sub. (5).

9 (c) Refer complaints of misclassification of employees as nonemployees to other  
10 state or local agencies that administer laws whose enforcement depends on the  
11 proper classification of employees.

12 (d) Cooperate with other state or local agencies in the investigation and  
13 enforcement of laws whose enforcement depends on the proper classification of  
14 employees ~~and of s. 101.147 relating to the registration of contractors.~~

15 (e) Appoint attorneys licensed to practice in this state as appeal tribunals to  
16 conduct hearings and issue decisions under sub. (6) (b).

17 **(3) COMPLIANCE REQUIREMENTS.** (a) For purposes of ensuring that an employer  
18 is properly classifying the persons performing services for the employer as employees  
19 and nonemployees, the department may require an employer to prove all of the  
20 following:

21 1. That the employer is maintaining records identifying all persons performing  
22 work for the employer, including the name, address, and social security number of  
23 each of those persons.

24 2. That the employer is maintaining worker's compensation coverage for its  
25 employees as required under s. 102.28 (2).

1 3. That the employer has provided to the department the information required  
2 under s. 103.05 with respect to each newly hired employee of the employer.

3 4. That the employer is maintaining records of the hours worked by its  
4 employees, the wages paid to those employees, any deductions from those wages, and  
5 any other information that the employer is required to keep under rules promulgated  
6 under s. 103.02 or 104.04<sup>NO</sup>

7 ~~5. That the employee~~ is listing deductions from wages as required under s.  
8 103.457<sup>and</sup>

9 <sup>5</sup> That the employer is in compliance with ch. 108.

10 (b) Any agreement between an employer and employee purporting to waive or  
11 modify any requirement under par. (a) is void.

12 (4) COMPLIANCE INVESTIGATIONS. (a) The department may conduct  
13 investigations to ensure compliance with the requirements specified in sub. (3) (a).  
14 In conducting an investigation, the department may do any of the following:

15 1. Enter and inspect any place of business or place of employment and examine  
16 and copy any records that the employer is required to keep under rules promulgated  
17 under s. 103.02 or 104.04 <sup>← semicolon</sup> and any ~~books~~ <sup>books</sup>, registers, payroll records, records of  
18 wage withholdings, records of work activity and hours of work, and records or indicia  
19 of the employment status of persons performing work for the employer <sup>and any other records relating to compliance with the requirements specified in sub. (3)(a)</sup>

20 2. Determine the identity and activities of any person performing work at any  
21 ~~place of business or place of employment~~ <sup>location where the work described in 103.02(2)(c) is being performed</sup> <sup>period stays</sup>

22 3. Interview and obtain statements in writing from any employer or person  
23 performing work or present at ~~a place of business or place of employment~~ <sup>to</sup> with  
24 respect to the names and address of persons performing work for the employer, the  
25 payment of wages <sup>to</sup> and hours worked by those persons, and any other information

any location where the work described in 103.02(2)(c) is being performed

*in addition, the department may conduct the activities specified under par. (a) 1*

1 relating to the remuneration of those persons and the nature and extent of services  
2 performed by those persons.

*b to 30*

3 (b) The department may conduct the activities under par. (a) at any location  
4 where the work described in s. 108.18 (2) (c) is performed by or for an employer  
5 at any other location where the records specified in par. (a) 1. are maintained by an  
6 employer or an agent of an employer.

7 (c) If in the course of an investigation of an employer the department  
8 determines that there is reason to believe that the employer is not the prime  
9 contractor of the work being performed by or for the employer, the department shall  
10 seek to determine the identity of the prime contractor. If the department identifies  
11 any person other than the employer that it believes to be the prime contractor of the  
12 work being performed, the department, for informational purposes, shall serve on  
13 that person copies of any notices or orders served on the employer under sub. (5) with  
14 respect to the work. Failure of the department to serve a copy of a notice or order  
15 under sub. (5) on a person believed to be a prime contractor does not relieve the  
16 employer from any liability arising out of the notice or order or impair the  
17 department from pursuing any remedy relating to the notice or order.

18 (5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) If after an investigation under  
19 sub. (4) the department determines that an employer has failed to demonstrate  
20 compliance with any of the requirements specified in sub. (3) (a), the department  
21 may serve on the employer a notice of the department's intent to issue an order  
22 requiring the employer to stop work at the locations specified in the notice. The  
23 notice shall advise the employer that the order will be issued within 3 business days

24 ~~as defined in s. 421.301(6)~~ after the date of the order unless within those 3 business  
25 days the employer provides information satisfactory to the department indicating

1 that the employer is in compliance with the requirements specified in sub. (3) (a) at  
2 each location specified in the notice.

3 (b) If within 3 business days after service of a notice under par. (a) an employer  
4 does not demonstrate compliance with the requirements listed under sub. (3) (a) with  
5 respect to a location specified in the notice, the department may serve an order on  
6 the employer requiring the employer to stop work at the locations specified in the  
7 order. The order shall advise the employer that the employer may request a hearing  
8 on the order under sub. (6) (a), describe how the employer may request a hearing, and  
9 be accompanied by a form for requesting a hearing. The order shall take effect  
10 ~~immediately upon its service on the employer~~ <sup>as provided in the order</sup> ← as provided in the order  
11 employer provides evidence satisfactory to the department that it is in compliance  
12 with the requirements under sub. (3) (a) and pays the forfeiture under par. (c).

13 (c) An employer that does not ~~immediately~~ stop work as required under an  
14 order under par. (b) may be required to forfeit \$250 for each day beginning on the day  
15 on which the order is served and ending on the day on which the employer stops work  
16 as required under the order or provides evidence satisfactory to the department that  
17 it is in compliance with sub. (3) (a), whichever occurs first.

18 (d) An ~~action taken~~ <sup>order</sup> under this subsection is final unless appealed under sub.  
19 (6). An ~~action taken~~ <sup>order</sup> under this subsection is subject to review only as provided in  
20 sub. (6) and not as provided in ch. 227.

21 (6) APPEAL OF STOP WORK ORDER AND CIVIL PENALTY. (a) Any employer that is  
22 aggrieved by an order to stop work under sub. (5) (b) may appeal the order by filing  
23 with the department a written request for a hearing to review the order within 10  
24 days after service of the order. If a request for a hearing is filed within those 10 days,  
25 the department shall hold the hearing within 14 days after receipt of the request.

1 The order to stop work shall be automatically stayed from the filing of the request  
2 for a hearing until the date of the hearing. Notwithstanding the stay of the order to  
3 stop work, the forfeiture under sub. (5) (c) shall continue to accrue as provided in sub.  
4 (5) (c).

5 (b) 1. The hearing shall be held before an appeal tribunal and shall be  
6 conducted in the manner described in s. 108.09 (5). Within 7 days after the hearing,  
7 the appeal tribunal shall issue a decision in writing affirming, reversing, or  
8 modifying the order to stop work and forfeiture.

9 2. If the appeal tribunal finds that the employer has at all times been in  
10 compliance with the requirements specified in sub. (3) (a), the appeal tribunal shall  
11 reverse the order to stop work and forfeiture.

12 3. If the appeal tribunal finds that the employer has not complied with the  
13 requirements specified in sub. (3) (a), the automatic stay under par. (a) shall be lifted  
14 and the order to stop work shall remain in effect until the employer provides evidence  
15 satisfactory to the department that the employer is in compliance with the  
16 requirements specified in sub. (3) (a) and pays the forfeiture under sub. (5) (c).

17 ~~4. A forfeiture affirmed by an appeal tribunal shall accrue from the first day~~  
18 ~~on which the employer was not in compliance with the requirements under sub. (3)~~  
19 ~~(a), as determined by the appeal tribunal, or the day on which the order to stop work~~  
20 ~~is served, whichever is earlier, and ending on the day on which the employer stops~~  
21 ~~work as required under the order or provides evidence satisfactory to the department~~  
22 ~~that it is in compliance with sub. (3) (a), whichever occurs first.~~

23 (4) A decision of an appeal tribunal under this paragraph is final unless a review  
24 of the decision is requested under par. (c). A decision of an appeal tribunal under this

1 paragraph is subject to review only as provided in par. (c) and not as provided in ch.  
2 227.

3 (c) The employer or the department may request a review of an appeal  
4 tribunal's decision by petitioning the commission for review of the decision within 21  
5 days after the decision was mailed to the employer's last-known address. The  
6 commission shall conduct the review in the manner described in s. 108.09 (6). An  
7 order to stop work that is in effect under par. (b) 3. shall remain in effect as provided  
8 in par. (b) 3. during the pendency of a review under this paragraph. A decision of the  
9 commission under this paragraph is final and the provisions of s. 108.10 (6) and (7)  
10 shall apply to the decision unless judicial review of the decision is requested under  
11 par. (d). A decision of the commission under this paragraph is subject to judicial  
12 review only as provided in par. (d) and not as provided in ch. 227.

13 (d) The employer or the department may commence an action for the judicial  
14 review of a decision of the commission under par. (c) within 30 days after the decision  
15 was mailed to the employer's last-known address. The scope of judicial review under  
16 this paragraph, and the manner of that review insofar as is applicable, shall be the  
17 same as that provided in s. 108.09 (7). An order to stop work that is in effect under  
18 par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency of a  
19 review under this paragraph.

20 (e) In addition to any forfeiture for which the employer may be liable under sub.  
21 (5) (c) and any other penalty for which the employer may be liable for a violation of  
22 a requirement specified in sub. (3) (a), any employer that violates a final order to stop  
23 work of the department under sub. (5) (b) or final decision of an appeal tribunal, the  
24 commission, or a court affirming such an order under par. (b), (c), or (d) is subject to  
25 a forfeiture of \$1,000 for each day of violation. An employer may seek review of

Insert  
11-2 2

a

forfeiture imposed under this paragraph in the same manner as an order to stop work is reviewed under pars. (a) to (d).

(8)

RECOVERY OF UNPAID FORFEITURES. (a) If an employer fails to pay a forfeiture imposed under sub. (5) (c) or (6) (e), the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except when creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the stop work order or decision affirming the stop work order becomes final and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. The employer shall pay interest on the amount owed at the rate of 1 percent per month or fraction of a month from the date on which the amount became due. If a lien is initially barred or stayed by bankruptcy or other insolvency law, the lien shall become effective immediately upon expiration or removal of the bar or stay. The perfected lien does not give the department priority over any lienholders, mortgagees, purchasers for value, judgment creditors, or pledges whose interests have been recorded before the lien of the department is recorded.

Mentioned

(b) 1. If an employer fails to pay to the department any amount found to be due the department in proceedings under this section and if no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative of the department may issue a warrant directed to the clerk of circuit court for any county of the state. The clerk of circuit court shall enter in the judgment and lien docket the name of the employer ~~mentioned~~ in the warrant and the amount of the forfeiture, interest, costs, and other fees for which the warrant is issued and the date when the warrant is entered. A warrant so entered shall be

23

1 considered in all respect to be a final judgment constituting a perfected lien upon the  
2 employer's right, title, and interest in all real and personal property located in the  
3 county where the warrant is entered. The lien is effective when the department  
4 issues the warrant and shall continue until the amount owed, including interest,  
5 costs, and other fees to the date of payment, is paid. After a warrant is entered in  
6 the judgment and lien docket, the department or any authorized representative of  
7 the department may file an execution with the clerk of circuit court for filing by the  
8 clerk of circuit court with the sheriff of any county where real or personal property  
9 of the employer is found, commanding the sheriff to levy upon and sell sufficient real  
10 and personal property of the employer to pay the amount stated in the warrant in  
11 the same manner as upon an execution against property issued upon the judgment  
12 of a court of record, and to return the warrant of the department and pay to the  
13 department the money collected by virtue of the execution within 60 days after  
14 receipt of the warrant.

15 2. The clerk of circuit court shall accept, file, and enter each warrant,  
16 satisfaction, release, or withdrawal under this subsection in the judgment and lien  
17 docket without prepayment of any fee, but the clerk of circuit court shall submit a  
18 statement of the proper fee semiannually to the department covering the period from  
19 January 1 to June 30 and July 1 to December 31 unless a different billing period is  
20 agreed to between the clerk of circuit court and the department. The fees shall then  
21 be paid by the department, but the fees provided by s. 814.61 (5) for entering the  
22 warrants shall be added to the amount of the warrant and collected from the  
23 employer when satisfaction or release is presented for entry.

24 (c) When the penalties set forth in a warrant together with interest and other  
25 fees to the date of payment and all costs due the department have been paid to the

1 department, the department shall issue a satisfaction of the warrant and file that  
2 satisfaction with the clerk of circuit court. The clerk of circuit court shall  
3 immediately enter a satisfaction of the judgment on the judgment and lien docket.  
4 The department shall send a copy of the satisfaction to the employer.

5 (d) If the department finds that the interests of the state will not be jeopardized,  
6 the department, upon such conditions as it may exact, may issue a release of any  
7 warrant with respect to any real or personal property upon which the warrant is a  
8 lien or color upon title. The clerk of the circuit court shall enter the release upon  
9 presentation of the release to the clerk and payment of the fee for filing the release  
10 and the release shall be conclusive proof that the lien or cloud upon the title of the  
11 property covered by the release is extinguished.

12 (e) If the department issues an erroneous warrant, the department shall issue  
13 a notice of withdrawal of the warrant to the clerk of circuit court for the county in  
14 which the warrant is filed. The clerk shall void the warrant and any liens attached  
15 by the warrant.

16 (9) (8) LEVY FOR DELINQUENT FORFEITURES. If any employer who is liable for any  
17 forfeiture under sub. (5) (c) or (6) (e) neglects or refuses to pay that forfeiture after  
18 the department has made demand for payment, the department may collect that  
19 forfeiture and expenses of the levy by levy upon any property belonging to the  
20 employer. Section 108.225 applies to a levy under this subsection except as follows:

21 (a) For purposes of a levy under this subsection, "debt" as used in s. 108.225  
22 means a delinquent forfeiture under sub. (5) (c) or (6) (e) or any liability of a 3rd party  
23 for failure to surrender to the department property or rights to property subject to  
24 levy after proceedings under ss. 108.10 and 108.225 to determine that liability.

1 (b) Section 108.225 (16) (a) and not s. 108.225 (16) (am) applies to a levy under  
2 this subsection.

(END)

3

CAS 14-2

SECTION #      EFFECTIVE DATE.

(1) <sup>(3)</sup> WORKER CLASSIFICATION COMPLIANCE.

This act takes effect on January 1, 2011.

1        ¶ (7) OTHER ENFORCEMENT ACTION NOT PRECLUDED. An investigation, order, or  
 2        decision under sub. (4), (5), or (6) does not preclude or otherwise impair or affect any  
 3        other action that is required or permitted under this chapter or under ch. 101, 102,  
 4        104, 108, 109, or 111, including any investigation, order, or decision, any civil or  
 5        criminal action or administrative proceeding, or any obligation for any payment,  
 6        reimbursement, assessment, surcharge, forfeiture, or other remedy or penalty under  
 7        any of those chapters, to enforce a requirement under any of those chapters.

(END OF INSERT)

(INSERT 14-2)

8        **SECTION 2. Effective date.**

9        (1) WORKER CLASSIFICATION COMPLIANCE. This act takes effect on January 1,  
 10        2011.

(END OF INSERT)

Insert A

¶ Finally, the bill provides <sup>that</sup> an investigatory order or  
 decision under the bill does not preclude or otherwise <sup>impair or</sup> impair or  
 affect any other action that is required or permitted under the  
 affect any other action that is required or permitted under the  
 employment laws of this state to enforce a requirement under any  
 employment laws of this state to enforce a requirement under any  
 of those laws.  
 of those laws.

(end of insert)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4432/1ins  
GMM.....

(INSERT 3-1)

1 SECTION 1. 103.005 (10) of the statutes, as affected by 2009 Wisconsin Act 3,  
2 is amended to read:

3 103.005 (10) Except as provided in ss. 103.06 (5) (d), 103.275 (2) (bm) and (br),  
4 103.34 (10) (b) and (c), 103.91 (4) (b) and (c), 103.92 (6) and (7), 104.07 (5) and (6), and  
5 105.13 (2) and (3), orders of the department under chs. 103 to 106 shall be subject to  
6 review in the manner provided in ch. 227.

> NOTE: NOTE: Sub. (10) is shown as amended eff. 4-1-10 by 2009 Wis. Act 3. Prior to 4-1-10 it reads:NOTE:

7 (10) Except as provided in ss. 103.275 (2) (bm) and (br), 103.91 (4) (b) and (c), 103.92 (6) and (7), 104.07 (5) and (6) and 105.13 (2) and (3), orders of the department  
8 under chs. 103 to 106 shall be subject to review in the manner provided in ch. 227.

History: 1995 a. 27 ss. 2030, 3649r, 3747, 9130 (4); 1995 a. 215, 404; 1997 a. 3, 191, 237; 2001 a. 61; 2007 a. 20 ss. 1489, 2648, 2649; 2009 a. 3.

(END OF INSERT)

(INSERT 3-2)

9 Q (a) "Business day" means any day on which the offices of the department are  
10 open.

(END OF INSERT)

(INSERT 4-4)

11 Q 6. For purposes of listing deductions from wages under sub. (3) (a) 4. as required  
12 under s. 103.457, an employee, as defined in s. 103.001 (5).

(END OF INSERT)

(INSERT 4-18)

13 Q 6. For purposes of listing deductions from wages under sub. (3) (a) 4. as required  
14 under s. 103.457, an employer, as defined in s. 103.001 (6).

(END OF INSERT)

(INSERT 11-2)