

2009 DRAFTING REQUEST

Bill

Received: 02/25/2010

Received By: jkuesel

Wanted: As time permits

Companion to LRB:

For: Robert Wirch (608) 267-8979

By/Representing: Michael Tierney

May Contact: Dan LaRocque, DWD (per M Tierney

Drafter: jkuesel

Subject: Unemployment Insurance
Employ Priv - worker's comp
Employ Pub - miscellaneous
Employ Priv - minimum wage
Employ Priv - job training
Employ Priv - prevailing wage
Discrimination

Addl. Drafters: gmalaise

Extra Copies:

Submit via email: YES

Requester's email: Sen.Wirch@legis.wisconsin.gov

Carbon copy (CC:) to: daniel.larocque@dwd.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Worker classification and compliance

Instructions:

Per attached E mail, 2/5/10.

Drafting History:

Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. It contains two rows of drafting history entries.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	gmalaise 03/31/2010	bkraft 04/01/2010	rschluet 04/01/2010	_____	sbasford 04/01/2010		State
/2	gmalaise 04/01/2010	bkraft 04/01/2010	mduchek 04/01/2010	_____	sbasford 04/01/2010	mbarman 04/02/2010	

FE Sent For: "1a" @ intro. 4/7/10

<END>

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/P1			mduchek 03/30/2010	_____	sbasford 03/30/2010		State

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1/2 bjk 4/1



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Identical to LRB:

For: Robert Wirch (608) 267-8979

By/Representing: Michael Tierney

This file may be shown to any legislator: NO

Drafter: jkuesel

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/?	jkuesel			_____			

FE Sent For:

Malaise, Gordon

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Saturday, March 27, 2010 1:09 PM
To: Malaise, Gordon
Cc: Kuesel, Jeffery; Schwalbe, Tracey L - DWD
Subject: Further redraft of worker classification bill

Attachments: Worker Classification Compliance Draft Legislation 032710.doc; Worker classification 032710 compared to 032610REV.doc

Gordon:
Attached is another redraft. Also attached is a blackline comparison of this and the draft I sent you last (3:47 pm Friday).
Dan



Worker
Classification Compliar

Comparison to last draft:



Worker
Classification 032710 c

-- DRAFT --

Proposed legislation: Worker Classification Compliance

Create: §103.____ Worker Classification Compliance.

(1) **WORKER CLASSIFICATION COMPLIANCE.** The department shall, for the purpose of promoting and achieving compliance by employers with the laws enumerated in this section related to proper classification of workers as employees, educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) **SCOPE AND DEFINITIONS.** (a) This section applies only to employers engaged in construction and individuals performing services for such employers. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(b) "Department" for purposes of this section means the department of workforce development.

(c) "Commission" for purposes of this section means the labor and industry review commission.

(d) "Employee": For purposes of this section, the determination of whether a worker performing services for an employer is an employee: for purposes of s. 102.28(2) will be made by application of s. 102.07; for purposes of s. 103.457 and Wis. Admin. Code section DWD 274.06 will be made by application of s. 103.001(5); for purposes of Wis. Admin. Code sections DWD 272.10 and DWD 272.11 will be made by application of s. 104.01; and for purposes chapter 108 will be made by application of s. 108.02(12).

(3) **COMPLIANCE REQUIREMENTS.** (a) For purposes of this section, an employer of one or more employees shall be required to prove that it:

1. Maintains records identifying its workers, including without limitation the name, address and social security number of each worker.

2. Maintains workers compensation coverage for its employees as required by s. 102.28(2).

3. Filed new hire reports and information as required by s. 103.05.

4. Maintains records of hours worked, wages paid to employees and deductions from wages as required by Wis. Admin. Code sections DWD 272.10, DWD 272.11 and DWD 274.06. 103.457

5. Provides accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.

6. Registered with the department as an employer, as defined in s. 108.02(13), subject to the unemployment insurance law, chapter 108.

(b) No provision of this section may be contravened or set aside by private agreement.

(4) **COMPLIANCE INVESTIGATIONS.** (a) The department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identities and activities of workers at an employer's place of business or work site;

2. Enter and inspect any place of business or employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;

3. Question and obtain statements in writing from an employer, employee and other persons in the place of business or employment or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers; and

4. Issue stop work orders.

(b) The department shall have the authority to conduct its investigations under this subsection at any location where construction work is performed by or for an employer and to inspect records and documents maintained at any place of business or other location where any such records or documents are maintained by the employer or its agents.

(c) In the course of an investigation of an employer that the department has reason to believe is not the prime contractor of the work the department will seek to identify the prime contractor. The department will attempt to notify the person that it believes is the prime contractor with respect to the work of the employer that it has taken action under sub. (5) involving work of the employer by serving that person with informational copies of all notices and orders that it issues under sub. (5) with respect to the work. The failure of the department for any reason to notify the prime contractor of its action involving the employer will not diminish the effect of the notice or order.

(5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) Whenever the department determines, following an investigation under sub. (4), that an employer has failed to demonstrate compliance with the requirements of sub. (3), the department may serve the employer with a notice of its intent to issue an order to the employer to stop work performed for the employer at the locations specified in the notice. The notice will advise the employer that it will have three business days within which to produce information satisfactory to the department that the employer is in compliance with the requirements of sub. (3) at each location specified in the notice.

(b) In the event that the department determines based upon all information provided to it by the employer on or before the third day following service of the notice under sub. (a) that the employer has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employer to cease all work activities at the locations specified in the notice and in that event the department shall serve the order on the employer. Such order shall take effect immediately upon its service upon the employer and remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty to the department for each day that the department determines the employer was not in compliance with the requirements of sub. (3). The penalty shall accrue in the amount of \$250 per day from the date of the order to stop work is served on the employer until the employer provides evidence satisfactory to the department and timely notice to the department of having ceased work on the work site in question or, if the employer does not cease work, until the date that the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employer aggrieved by the imposition of an order to stop work and assess the penalty under sub. (5) shall be provided a reasonable and prompt opportunity to be heard. The employer shall have ten days from the date of service of the order to request a hearing to review such order. An employer may appeal an order to stop work by filing a written request for a hearing with the agent of the department on the work site on a form to be provided by the department with the order, or by filing a request for hearing with the department in the manner prescribed

by the order. Any employer that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless and until the employer provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing under this section shall be held before an appeal tribunal. An appeal tribunal shall be an attorney licensed to practice law in the state of Wisconsin and appointed by the department to conduct hearings and issue decisions under this section. Section 108.09(5) shall apply to the proceedings before such appeal tribunal. Notwithstanding the provisions of chapter 227, that chapter shall not apply to proceedings under this section. The appeal tribunal shall issue a decision in writing in an appeal within seven days of the date of the hearing affirming, reversing or modifying the order to stop work and assessing a penalty.

(c) If the appeal tribunal finds that the employer has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall reverse the order to stop work and assessing the penalty.

(d) If the appeal tribunal finds that the employer has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays the penalty assessed under sub. (5).

(e) A penalty affirmed by an appeal tribunal shall accrue from the first day that it finds that the employer was not in compliance with the requirements of sub. (3) on or following the date of service of the order to stop work until the employer stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employer provides evidence satisfactory to the department that it has complied with the requirements of sub. (3) subsequent to the decision.

(f) The employer or the department may initiate review of an appeal tribunal decision issued under this section by filing a petition with the commission within 21 days after the appeal tribunal decision was mailed to the employer's last known address. Review shall be conducted by the commission in accordance with s. 108.10(2) and (3) and s. 108.09(6).

(g) The employer or the department may commence action for the judicial review of a decision of the commission under this section by commencing such action in accordance with sections 108.10(4), 108.09(7) and 102.23 within 30 days after the decision of the commission is mailed to the employer's last known address.

(h) A stop work order shall not be stayed during the pendency of review of an appeal tribunal decision or commission decision affirming an order to stop work.

(i) In the event that the department determines that an employer has violated a final order to stop work or final decision affirming such an order, the department may issue an order to the employer assessing a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased. In that event the employer may obtain review of the order assessing such penalty in accordance with the provisions of this subsection for review of an order to stop work.

(7) FINALITY AND EFFECT OF DECISIONS. (a) An order of the department to stop work or assess a penalty under this section is final if not timely appealed under sub. (6). An appeal tribunal decision issued under this section shall be final if no petition for review for commission review is timely filed under sub. (6). A decision by the commission under this section shall be final and the provisions of s. 108.10(6) and (7) shall apply to such decision if no action for judicial review is timely commenced under sub. (6).

(b) Orders and decisions issued under this section shall not preclude or otherwise affect reimbursements and assessments under s. 102.82, proceedings and orders under s. 102.28, and any other civil, criminal and administrative proceedings, decisions, orders, remedies and penalties under provisions of law other than this section.

(8) RECOVERY OF UNPAID ASSESSMENTS. (a) If an employer owes any penalties to the department under this section and fails to pay the amount owed, 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 where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the an order to stop work or decision affirming an order to stop work 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 one percent per month or fraction thereof from the date such amount became due. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

(b) 1. If any employer fails to pay to the department any amount found to be due it in proceedings pursuant to this section, and no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative 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 penalty, interest, costs and other fees for which the warrant is issued and the date when such copy is entered. A warrant so entered shall be considered in all respects as a final judgment constituting a perfected lien upon the employer's right, title and interest in all real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid. After a warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employer or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

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

(c) When the penalties set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the employer.

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

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

(f) The department may recover any penalties due under this section by levy by application of the provisions of s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) INTERDEPARTMENTAL COOPERATION. The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary and as permitted by law to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Saturday, February 06, 2010 11:10 AM
To: Tierney, Michael
Cc: Malaise, Gordon
Subject: FW: Drafting request - Worker classification
Importance: High
Attachments: Microsoft Word - Worker Classification Compliance Draft Legislation 1223091.pdf

Michael,

This proposal emanates from an all-agency working group in DWD that is continuing to meet. When it is drafted, it will involve all of the divisions of DWD, so both Gordon Malaise and I will be involved. I have seen this proposal and at least one prior version. I have discussed it with Dan LaRocque, the chairperson of the Council on Unemployment Insurance, and relayed some comments and questions. As currently structured, it utilizes the UI adjudication and enforcement system, yet the scope of the draft sweeps beyond UI. This doesn't work very well, particularly because UI is 100% federally funded and federal auditors require that UI administrative funding be used for UI only. Also, worker's comp has its own adjudication and enforcement system, as do the other divisions of DWD to a less formal extent.

I am currently very busy. My priority at this point with UI is to draft what the council wants or seems very likely to adopt. The reason is that these items can be time consuming to draft and once the council finishes its work, the legislative leaders are anxious to quickly approve the council's recommendations. The current word I have from the UI people is the worker classification decision item is not close to adoption in its current form, though there is still interest and support for the idea by department personnel. The item also requires approval of the other divisions of DWD as well as the council on worker's compensation, which has not yet taken it up.

Because of time constraints I will need to prioritize the items that the UI council adopts or seems very likely to adopt. Also, in order to produce a draft of the worker classification proposal, I will need to confer with the UI people with regard to the remaining questions. In addition, Gordon will need to handle worker's comp and the other divisions.

Jeffery Kuesel

Managing Attorney
Wisconsin Legislative Reference Bureau
P.O.Box 2037
Madison WI 53701-2037
(608) 266-6778
jeffery.kuesel@legis.state.wi.us

From: Malaise, Gordon
Sent: Friday, February 05, 2010 11:49 AM
To: Kuesel, Jeffery
Cc: Kahler, Pam
Subject: FW: Drafting request
Importance: High

Jeff and Pam:

This draft is an initiative of the Unemployment Insurance Advisory Council, which is Jeff's area.

Gordon

From: Duerst, Christina

02/25/2010

Sent: Friday, February 05, 2010 10:57 AM
To: Malaise, Gordon; Kahler, Pam
Subject: FW: Drafting request
Importance: High

Would this be something one of you two could draft?

From: Tierney, Michael
Sent: Friday, February 05, 2010 10:55 AM
To: LRB.Legal
Subject: Drafting request

Senator Wirch would like the attached drafted for introduction.

If there questions, please let me know. I would also like to share with the drafter the names of individuals that may be contacted regarding the draft.

Thank you.

Mike Tierney

Office of Senator Wirch

Proposed legislation: Worker Classification Compliance

Create: §103. __ Worker Classification Compliance.

(1) OFFICE OF WORKER CLASSIFICATION COMPLIANCE. (a) The department shall create an office of worker classification compliance to educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) SCOPE AND DEFINITION. This section applies only to employing units engaged in construction and individuals performing services for such employing units. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(3) COMPLIANCE REQUIREMENTS. (a) For purposes of this section, an employer of one or more employees shall be required to prove that it has:

1. Maintained records identifying its workers, including without limitation the name, address and social security number of each worker.
2. Maintained workers compensation coverage for its employees as required by s. 102.28(2)(a).
3. Filed new hire reports and information as required by s. 103.05.
4. Maintained records of hours worked, wages paid and to employees and deductions from wages as required by s. 103.85 and chapter 109.
5. Provided accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.
6. Registered with department as an employer subject to the unemployment insurance law, s. 108.02(13).

(b) For purposes of this section, an employer-employee relationship shall be presumed to exist when services are performed for pay by an individual for an employing unit, unless the employing unit demonstrates that the individual is not an employee for purposes of par. (3)(a)2. under s. 102. __; for purposes of par. (3)(a)4. under s. 109.01(1r), for purposes of par. (3)(a) 3., 4., and 5. under s. 103.001(5); and for purposes of par. (3)(a)6. under s. 108.02(12).

(c) No provision of this section may be contravened or set aside by private agreement.

(4) COMPLIANCE INVESTIGATIONS. (a) For the purpose of determining whether or not an employing unit has demonstrated compliance with the requirements of sub. (3), the department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identity and activities of workers at an employing unit's place of business or work site;
2. Enter and inspect any place of business, employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;
3. Question and obtain statements in writing from an employing unit, employee and other persons in the premises, place of business or employment, or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers;
4. Issue stop work orders;
5. Enforce the terms of a stop work order; and
6. Perform any other actions necessary to ensure compliance with this section.

(5) ASSISTANCE BY LAW ENFORCEMENT. Any law enforcement agency shall, at the request of the department, render any assistance necessary to carry out the provisions of this section, including but not limited to preventing any employee or other persons from remaining at a place of employment or work site after a stop work order has taken effect.

(6) STOP WORK ORDERS AND CIVIL PENALTIES. Whenever the department determines that an employing unit has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employing unit to cease business operations at the work sites or places of employment of said employing unit. In that event the department shall serve an order on the employing unit requiring the employing unit to stop work at the work site specified in the order. Such order shall take effect immediately upon its service upon the employing unit unless the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty into the administrative account under s. 108.20 in the amount of \$250 per day for each day such employing unit was not in compliance with the requirements of sub. (3). The penalty shall accrue from the first date of the employing unit's non-compliance until the employing unit ceases work on the work site in question or, if the employing unit does not cease work, until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3). The order to stop work shall remain in effect until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays any civil penalty issued under this subsection.

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employing unit aggrieved by the imposition of an order to stop work or imposing a civil penalty shall be provided a reasonable and prompt opportunity to be heard. The employing unit shall have ten days from the date of service of the order to request a hearing to review such order. An employing unit may appeal an order to stop work by filing a written statement of appeal with the department agent on the work site immediately upon receipt of the order, or by filing a request for hearing with the department in the manner identified on the order. Any employing unit that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless the employing unit provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing requested shall be held before an appeal tribunal established as provided by s. 108.09(3). Section 108.09 (5) shall apply to the proceedings before such appeal tribunal. The appeal tribunal shall issue a decision in an appeal within seven days of the date of the hearing. The appeal tribunal may affirm, reverse or modify the order to stop work or to assess a penalty.

(c) If the appeal tribunal finds that the employing unit has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall rescind the order to stop work and assessing the penalty under sub. (5).

(d) If the appeal tribunal finds that the employing unit has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employing unit provides evidence, satisfactory to the department of having complied with the requirements of sub. (3), and pays any civil penalty assessed under sub. (6).

(e) If the appeal tribunal affirms or modifies a penalty assessed by the department, the penalty shall be increased in amount to \$500 per day. A penalty assessed by an appeal tribunal shall accrue from the first day that it finds that the employing unit was not in compliance with the requirements of sub. (3) until the employing unit stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(f) A final decision by an appeal tribunal overturning a stop work order shall overturn any penalty assessed by the order.

(h) Proceedings to review an appeal tribunal decision issued under this section shall be initiated and conducted in accordance with s. 108.10. The stop work order shall not be stayed during the pendency of review of an appeal tribunal decision affirming an order to stop work. An appeal tribunal decision issued under this section shall be final if no petition for review is timely filed pursuant to s. 108.10.

(i) An employer that violates a final order to stop work or final decision affirming such an order shall be assessed a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased.

(7) **NON-PRECLUSIVE EFFECT OF DECISIONS.** (a) The investigation and the decision of the department as to whether an employing unit failed to demonstrate compliance with the requirements of sub. (3) may be given substantial weight by the department in enforcing statutes other than this section that the department is charged to enforce.

(b) This section shall not preclude or affect penalties or remedies provided by other provisions of law.

(8) **LIENS AND ENFORCEMENT AUTHORITY.** The department may enforce any penalties due under this section pursuant to s. 108.22 and by levy pursuant to s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) **INTERDEPARTMENTAL COOPERATION.** The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

Malaise, Gordon

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Friday, March 26, 2010 3:47 PM
To: Malaise, Gordon
Subject: Redraft of worker classification compliance bill

Attachments: Worker Classification Compliance Draft Legislation 032610 REV.doc

Gordon,
Following further discussion, we made some small changes in the definition of employee and compliance sections (2 and 3).

We also bolstered section (7)(b) and made some clarifying edits re appeals and review.

Here is a current draft. We will need an LRB draft soon. Thanks.

Dan



Worker
Classification Compliar

-- DRAFT --

Proposed legislation: Worker Classification Compliance

Create: §103. __ Worker Classification Compliance.

(1) **WORKER CLASSIFICATION COMPLIANCE.** The department shall, for the purpose of promoting and achieving compliance by employers with the laws enumerated in this section related to proper classification of workers as employees, educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) **SCOPE AND DEFINITIONS.** (a) This section applies only to employers engaged in construction and individuals performing services for such employers. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(b) "Department" for purposes of this section means the department of workforce development.

(c) "Commission" for purposes of this section means the labor and industry review commission.

(d) "Employee": For purposes of this section, the determination of whether a worker performing services for an employer is an employee: for purposes of s. 102.28(2) will be made by application of s. 102.07; for purposes of s. 103.457 and Wis. Admin. Code section DWD 274.06 will be made by application of s. 103.001(5); for purposes of Wis. Admin. Code sections DWD 272.10 and DWD 272.11 will be made by application of s. 104.01; and for purposes chapter 108 will be made by application of s. 108.02(12).

(3) **COMPLIANCE REQUIREMENTS.** (a) For purposes of this section, an employer of one or more employees shall be required to prove that it:

1. Maintains records identifying its workers, including without limitation the name, address and social security number of each worker.

2. Maintains workers compensation coverage for its employees as required by s. 102.28(2).

3. Filed new hire reports and information as required by s. 103.05.

4. Maintains records of hours worked, wages paid to employees and deductions from wages as required by Wis. Admin. Code sections DWD 272.10, DWD 272.11 and DWD 274.06.

5. Provides accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.

6. Registered with the department as an employer, as defined in s. 108.02(13), subject to the unemployment insurance law, chapter 108.

(b) No provision of this section may be contravened or set aside by private agreement.

(4) **COMPLIANCE INVESTIGATIONS.** (a) The department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identities and activities of workers at an employer's place of business or work site;

2. Enter and inspect any place of business or employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;

3. Question and obtain statements in writing from an employer, employee and other persons in the place of business or employment or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers; and

4. Issue stop work orders.

(b) The department shall have the authority to conduct its investigations under this subsection at any location where construction work is performed by or for an employer and to inspect records and documents maintained at any place of business or other location where any such records or documents are maintained by the employer or its agents.

(5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) Whenever the department determines, following an investigation under sub. (4), that an employer has failed to demonstrate compliance with the requirements of sub. (3), the department may serve the employer with a notice of its intent to issue an order to the employer to stop work performed for the employer at the locations specified in the notice. The notice will advise the employer that it will have three business days within which to produce information satisfactory to the department that the employer is in compliance with the requirements of sub. (3) at each location specified in the notice.

(b) In the event that the department determines based upon all information provided to it by the employer on or before the third day following service of the notice under sub. (a) that the employer has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employer to cease all work activities at the locations specified in the notice and in that event the department shall serve the order on the employer. Such order shall take effect immediately upon its service upon the employer and remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty to the department for each day that the department determines the employer was not in compliance with the requirements of sub. (3). The penalty shall accrue in the amount of \$250 per day from the date of the order to stop work is served on the employer until the employer provides evidence satisfactory to the department and timely notice to the department of having ceased work on the work site in question or, if the employer does not cease work, until the date that the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employer aggrieved by the imposition of an order to stop work and assess the penalty under sub. (5) shall be provided a reasonable and prompt opportunity to be heard. The employer shall have ten days from the date of service of the order to request a hearing to review such order. An employer may appeal an order to stop work by filing a written request for a hearing with the agent of the department on the work site on a form to be provided by the department with the order, or by filing a request for hearing with the department in the manner prescribed by the order. Any employer that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless and until the employer provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing under this section shall be held before an appeal tribunal. An appeal tribunal shall be an attorney licensed to practice law in the state of Wisconsin and appointed by the department to conduct hearings and issue decisions under this section. Section 108.09(5) shall apply to the proceedings before such appeal tribunal. Notwithstanding the provisions of chapter 227, that chapter shall not apply to proceedings under this section. The appeal tribunal shall issue a decision in writing in an appeal within seven days of the date of the hearing affirming, reversing or modifying the order to stop work and assessing a penalty.

(c) If the appeal tribunal finds that the employer has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall reverse the order to stop work and assessing the penalty.

(d) If the appeal tribunal finds that the employer has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays the penalty assessed under sub. (5).

(e) A penalty affirmed by an appeal tribunal shall accrue from the first day that it finds that the employer was not in compliance with the requirements of sub. (3) on or following the date of service of the order to stop work until the employer stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employer provides evidence satisfactory to the department that it has complied with the requirements of sub. (3) subsequent to the decision.

(f) The employer or the department may initiate review of an appeal tribunal decision issued under this section by filing a petition with the commission within 21 days after the appeal tribunal decision was mailed to the employer's last known address. Review shall be conducted by the commission in accordance with s. 108.10(2) and (3) and s. 108.09(6).

(g) The employer or the department may commence action for the judicial review of a decision of the commission under this section by commencing such action in accordance with sections 108.10(4), 108.09(7) and 102.23 within 30 days after the decision of the commission is mailed to the employer's last known address.

(h) A stop work order shall not be stayed during the pendency of review of an appeal tribunal decision or commission decision affirming an order to stop work.

(i) In the event that the department determines that an employer has violated a final order to stop work or final decision affirming such an order, the department may issue an order to the employer assessing a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased. In that event the employer may obtain review of the order assessing such penalty in accordance with the provisions of this subsection for review of an order to stop work.

(7) FINALITY AND EFFECT OF DECISIONS. (a) An order of the department to stop work or assess a penalty under this section is final if not timely appealed under sub. (6). An appeal tribunal decision issued under this section shall be final if no petition for review for commission review is timely filed under sub. (6). A decision by the commission under this section shall be final and the provisions of s. 108.10(6) and (7) shall apply to such decision if no petition for judicial review is timely filed under sub. (6).

(b) Orders and decisions issued under this section shall not preclude or otherwise affect reimbursements and assessments under s. 102.82, proceedings and orders under s. 102.28, and civil, criminal and administrative proceedings, decisions, orders, remedies and penalties under provisions of law other than this section.

(8) RECOVERY OF UNPAID ASSESSMENTS. (a) If an employer owes any penalties to the department under this section and fails to pay the amount owed, 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 where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the an order to stop work or decision affirming an order to stop work 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 one percent per month or fraction thereof from the date such amount became due. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

(b) 1. If any employer fails to pay to the department any amount found to be due it in proceedings pursuant to this section, and no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative 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 penalty, interest, costs and other fees for which the warrant is issued and the date when such copy is entered. A warrant so entered shall be considered in all respects as a final judgment constituting a perfected lien upon the employer's right, title and interest in all real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid. After a warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employer or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

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

(c) When the penalties set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the employer.

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

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

(f) The department may recover any penalties due under this section by levy by application of the provisions of s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) **INTERDEPARTMENTAL COOPERATION.** The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary and as permitted by law to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

Malaise, Gordon

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Friday, March 26, 2010 1:10 PM
To: Malaise, Gordon
Cc: Kuesel, Jeffery; Schwalbe, Tracey L - DWD
Subject: Worker classification compliance - redraft

Importance: High

Attachments: Worker Classification Compliance Draft Legislation 032610.doc

Gordon:

Attached is a draft, redrafted slightly as a result of discussions this morning. I continue to have some discomfort with (7) and particularly (7)(b) and department staff are discussing those issues.

It appears likely a bill will be introduced. We will want to have the LRB draft very soon.

I will give you a call now.

Dan



Worker
Classification Compliar

--DRAFT --

Proposed legislation: Worker Classification Compliance

Create: §103. __ Worker Classification Compliance.

(1) **WORKER CLASSIFICATION COMPLIANCE.** The department shall, for the purpose of promoting and achieving compliance by employers with the laws enumerated in this section related to proper classification of workers as employees, educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) **SCOPE AND DEFINITIONS.** (a) This section applies only to employers engaged in construction and individuals performing services for such employers. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(b) "Department" for purposes of this section means the department of workforce development.

(c) "Commission" for purposes of this section means the labor and industry review commission.

(d) "Employee": For purposes of this section, the determination of whether a worker performing services for an employer is an employee: for purposes of s. 102.28(2)(a) will be made by application of s. 102.07; for purposes of s. 103.457 and Wis. Admin. Code section DWD 274.06 will be made by application of s. 103.001(5); for purposes of Wis. Admin. Code sections DWD 272.10 and DWD 272.11 will be made by application of s. 104.01; and for purposes chapter 108 will be made by application of s. 108.02(12).

(3) **COMPLIANCE REQUIREMENTS.** (a) For purposes of this section, an employer of one or more employees shall be required to prove that it:

1. Maintains records identifying its workers, including without limitation the name, address and social security number of each worker.

2. Maintains workers compensation coverage for its employees as required by s. 102.28(2)(a).

3. Filed new hire reports and information as required by s. 103.05.

4. Maintains records of hours worked, wages paid to employees and deductions from wages as required by Wis. Admin. Code sections DWD 272.10, DWD 272.11 and DWD 274.06.

5. Provides accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.

6. Registered with the department as an employer, as defined in s. 108.02(13), subject to the unemployment insurance law, chapter 108.

(b) No provision of this section may be contravened or set aside by private agreement.

(4) **COMPLIANCE INVESTIGATIONS.** (a) The department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identities and activities of workers at an employer's place of business or work site;

2. Enter and inspect any place of business or employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;

3. Question and obtain statements in writing from an employer, employee and other persons in the place of business or employment or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers; and

4. Issue stop work orders.

(b) The department shall have the authority to conduct its investigations under this subsection at any location where construction work is performed by or for an employer and to inspect records and documents maintained at any place of business or other location where any such records or documents are maintained by the employer or its agents.

(5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) Whenever the department determines, following an investigation under sub. (4), that an employer has failed to demonstrate compliance with the requirements of sub. (3), the department may serve the employer with a notice of its intent to issue an order to the employer to stop work performed for the employer at the locations specified in the notice. The notice will advise the employer that it will have three business days within which to produce information satisfactory to the department that the employer is in compliance with the requirements of sub. (3) at each location specified in the notice.

(b) In the event that the department determines based upon all information provided to it by the employer on or before the third day following service of the notice under sub. (a) that the employer has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employer to cease all work activities at the locations specified in the notice and in that event the department shall serve the order on the employer. Such order shall take effect immediately upon its service upon the employer and remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty to the department for each day that the department determines the employer was not in compliance with the requirements of sub. (3). The penalty shall accrue in the amount of \$250 per day from the date of the order to stop work is served on the employer until the employer provides evidence satisfactory to the department and timely notice to the department of having ceased work on the work site in question or, if the employer does not cease work, until the date that the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employer aggrieved by the imposition of an order to stop work and assess the penalty under sub. (5) shall be provided a reasonable and prompt opportunity to be heard. The employer shall have ten days from the date of service of the order to request a hearing to review such order. An employer may appeal an order to stop work by filing a written request for a hearing with the agent of the department on the work site on a form to be provided by the department with the order, or by filing a request for hearing with the department in the manner prescribed by the order. Any employer that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless and until the employer provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing under this section shall be held before an appeal tribunal. An appeal tribunal shall be an attorney licensed to practice law in the state of Wisconsin and appointed by the department to conduct hearings and issue decisions under this section. Section 108.09(5) shall apply to the proceedings before such appeal tribunal. The appeal tribunal shall issue a decision in writing in an appeal within seven days of the date of the hearing affirming, reversing or modifying the order to stop work and assessing a penalty.

(c) If the appeal tribunal finds that the employer has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall reverse the order to stop work and assessing the penalty.

(d) If the appeal tribunal finds that the employer has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays the penalty assessed under sub. (5).

(e) A penalty affirmed by an appeal tribunal shall accrue from the first day that it finds that the employer was not in compliance with the requirements of sub. (3) on or following the date of service of the order to stop work until the employer stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employer provides evidence satisfactory to the department that it has complied with the requirements of sub. (3) subsequent to the decision.

(f) Review of an appeal tribunal decision issued under this section shall be initiated by petition to the commission. Review shall be conducted by the commission in accordance with s. 108.10(2) and (3) and s. 108.09(6).

(g) Review of a decision by the commission shall be obtained by the employer or the department by filing a petition for judicial review in accordance with s. 108.10(4).

(h) A stop work order shall not be stayed during the pendency of review of an appeal tribunal decision or commission decision affirming an order to stop work.

(i) In the event that the department determines that an employer has violated a final order to stop work or final decision affirming such an order, the department may issue an order to the employer assessing a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased. In that event the employer may obtain review of the order assessing such penalty in accordance with the provisions of this subsection for review of an order to stop work.

(7) EFFECT OF DECISIONS. (a) An order of the department to stop work or assess a penalty under this section is final if not timely appealed under sub. (6). An appeal tribunal decision issued under this section shall be final if no petition for review for commission review is timely filed under sub. (6). A decision by the commission under this section shall be final and the provisions of s. 108.10(6) and (7) shall apply to such decision if no petition for judicial review is timely filed under sub. (6).

(b) Orders and decisions issued under this section shall not preclude or otherwise affect penalties or remedies provided by other provisions of law.

(8) RECOVERY OF UNPAID ASSESSMENTS. (a) If an employer owes any penalties to the department under this section and fails to pay the amount owed, 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 where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the an order to stop work or decision affirming an order to stop work 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 one percent per month or fraction thereof from the date such amount became due. If a lien is initially

barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

(b) 1. If any employer fails to pay to the department any amount found to be due it in proceedings pursuant to this section, and no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative 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 penalty, interest, costs and other fees for which the warrant is issued and the date when such copy is entered. A warrant so entered shall be considered in all respects as a final judgment constituting a perfected lien upon the employer's right, title and interest in all real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid. After a warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employer or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

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

(c) When the penalties set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the employer.

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

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

(f) The department may recover any penalties due under this section by levy by application of the provisions of s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) INTERDEPARTMENTAL COOPERATION. The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary and as permitted by law to allow the

department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

Malaise, Gordon

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Thursday, March 25, 2010 5:07 PM
To: Malaise, Gordon
Cc: Schwalbe, Tracey L - DWD; Kuesel, Jeffery
Subject: RE: Worker classification bill

Importance: High

Attachments: Worker Classification Compliance Draft Legislation 032510 rev3.doc

The draft sent at 4:30 had several typos and other flaws. Here is a better draft.



Worker
Classification Compliar

From: LaRocque, Daniel J - DWD
Sent: Thursday, March 25, 2010 4:30 PM
To: Malaise, Gordon - LEGIS
Cc: Schwalbe, Tracey L - DWD; Kuesel, Jeffery - LEGIS
Subject: Worker classification bill

Gordon:

As we discussed earlier this afternoon, we have redrafted the proposed bill. The redraft is attached. After you have had an opportunity to review it, we should discuss any issues or questions you may have.

Department staff will be meeting tomorrow morning with construction contractor and labor reps. We may have some clarification or adjustments to the draft and perhaps some better understanding of whether the a bill will go forward. I will call you tomorrow morning after the meeting.

Thanks for your assistance in this matter.

Dan

<< File: Worker Classification Compliance Draft Legislation 032510rev.doc >>

--DRAFT --

Proposed legislation: Worker Classification Compliance

Create: §103. __ Worker Classification Compliance.

(1) **WORKER CLASSIFICATION COMPLIANCE.** The department shall, for the purpose of promoting and achieving compliance by employers with the laws enumerated in this section related to proper classification of workers as employees, educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) **SCOPE AND DEFINITIONS.** (a) This section applies only to employers engaged in construction and individuals performing services for such employers. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(b) "Department" for purposes of this section means the department of workforce development.

(c) "Commission" for purposes of this section means the labor and industry review commission.

(3) **COMPLIANCE REQUIREMENTS.** (a) For purposes of this section, an employer of one or more employees shall be required to prove that it has:

1. Maintained records identifying its workers, including without limitation the name, address and social security number of each worker.

2. Maintained workers compensation coverage for its employees as required by s. 102.28(2)(a).

3. Filed new hire reports and information as required by s. 103.05.

4. Maintained records of hours worked, wages paid to employees and deductions from wages as required by s. 103.85 and chapter 109.

5. Provided accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.

6. Registered with the department as an employer subject to the unemployment insurance law as defined in s. 108.02(13).

(b) For purposes of this section, the status of an individual as an employee shall be presumed to exist when services are performed for pay by an individual for an employer, unless the employer demonstrates that the individual is not an employee for purposes of par. (3)(a)2. under s. 102.07; for purposes of par. (3)(a)4. under s. 109.01(1r); for purposes of par. (3)(a) 3., 4., and 5. under s. 103.001(5); and for purposes of par. (3)(a)6. under s. 108.02(12).

(c) No provision of this section may be contravened or set aside by private agreement.

(4) **COMPLIANCE INVESTIGATIONS.** (a) The department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identities and activities of workers at an employer's place of business or work site;

2. Enter and inspect any place of business or employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;

3. Question and obtain statements in writing from an employer, employee and other persons in the place of business or employment or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers; and

4. Issue stop work orders.

(b) The department shall have the authority to conduct its investigations under this subsection at any location where construction work is performed by or for an employer and to inspect records and documents maintained at any place of business or other location where any such records or documents are maintained by the employer or its agents.

(5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) Whenever the department determines, following an investigation under sub. (4), that an employer has failed to demonstrate compliance with the requirements of sub. (3), the department may serve the employer with a notice of its intent to issue an order to the employer to stop work performed for the employer at the locations specified in the notice. The notice will advise the employer that it will have three business days within which to produce information satisfactory to the department that the employer is in compliance with the requirements of sub. (3) at each location specified in the notice.

(b) In the event that the department determines based upon all information provided to it by the employer on or before the third day following service of the notice under sub. (a) that the employer has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employer to cease all work activities at the locations specified in the notice and in that event the department shall serve the order on the employer. Such order shall take effect immediately upon its service upon the employer and remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty to the department for each day that the department determines the employer was not in compliance with the requirements of sub. (3). The penalty shall accrue in the amount of \$250 per day from the first date of the employer's non-compliance following the start of the department's investigation until the employer provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question or, if the employer does not cease work, until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employer aggrieved by the imposition of an order to stop work and assess the penalty under sub. (5) shall be provided a reasonable and prompt opportunity to be heard. The employer shall have ten days from the date of service of the order to request a hearing to review such order. An employer may appeal an order to stop work by filing a written request for a hearing with the agent of the department on the work site on a form to be provided by the department with the order, or by filing a request for hearing with the department in the manner prescribed by the order. Any employer that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless and until the employer provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing under this section shall be held before an appeal tribunal. An appeal tribunal shall be an attorney licensed to practice law in the state of Wisconsin and appointed by the department to conduct hearings and issue decisions under this section. Section 108.09(5) shall apply to the proceedings before such appeal tribunal. The appeal tribunal shall issue a decision in writing in an

appeal within seven days of the date of the hearing affirming, reversing or modifying the order to stop work and assessing a penalty.

(c) If the appeal tribunal finds that the employer has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall reverse the order to stop work and assessing the penalty.

(d) If the appeal tribunal finds that the employer has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employer provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays the penalty assessed under sub. (5).

(e) A penalty affirmed by an appeal tribunal shall accrue from the first day that it finds that the employer was not in compliance with the requirements of sub. (3) following the start of the investigation by the department until the employer stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employer provides evidence satisfactory to the department that it has complied with the requirements of sub. (3) subsequent to the decision.

(f) Review of an appeal tribunal decision issued under this section shall be initiated by petition to the commission. Review shall be conducted by the commission in accordance with s. 108.10(2) and (3) and s. 108.09(6).

(g) Review of a decision by the commission shall be obtained by the employer or the department by filing a petition for judicial review in accordance with s. 108.10(4).

(h) A stop work order shall not be stayed during the pendency of review of an appeal tribunal decision or commission decision affirming an order to stop work.

(i) In the event that the department determines that an employer has violated a final order to stop work or final decision affirming such an order, the department may issue an order to the employer assessing a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased. In that event the employer may obtain review of the order assessing such penalty in accordance with the provisions of this subsection for review of an order to stop work.

(7) EFFECT OF DECISIONS. (a) An order of the department to stop work or assess a penalty under this section is final if not timely appealed under sub. (6). An appeal tribunal decision issued under this section shall be final if no petition for review for commission review is timely filed under sub. (6). A decision by the commission under this section shall be final and the provisions of s. 108.10(6) and (7) shall apply to such decision if no petition for judicial review is timely filed under sub. (6).

(b) Orders and decisions issued under this section shall not preclude or otherwise affect penalties or remedies provided by other provisions of law.

(8) RECOVERY OF UNPAID ASSESSMENTS. (a) If an employer owes any penalties to the department under this section and fails to pay the amount owed, 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 where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the an order to stop work or decision affirming an order to stop work 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 one percent per month or fraction thereof from the date such amount became due. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

(b) 1. If any employer fails to pay to the department any amount found to be due in proceedings pursuant to this section, and no proceeding for review is pending and the time for taking an appeal or review has expired, the department or any authorized representative 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 penalty, interest, costs and other fees for which the warrant is issued and the date when such copy is entered. A warrant so entered shall be considered in all respects as a final judgment constituting a perfected lien upon the employer's right, title and interest in all real and personal property located in the county where the warrant is entered. The lien is effective when the department issues the warrant and shall continue until the amount owed, including interest, costs, and other fees to the date of payment, is paid. After a warrant is entered in the judgment and lien docket, the department or any authorized representative may file an execution with the clerk of circuit court for filing by the clerk of circuit court with the sheriff of any county where real or personal property of the employer or individual is found, commanding the sheriff to levy upon and sell sufficient real and personal property of the employer to pay the amount stated in the warrant in the same manner as upon an execution against property issued upon the judgment of a court of record, and to return the warrant to the department and pay to it the money collected by virtue thereof within 60 days after receipt of the warrant.

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

(c) When the penalties set forth in a warrant together with interest and other fees to date of payment and all costs due the department have been paid to it, the department shall issue a satisfaction of the warrant and file it with the clerk of circuit court. The clerk of circuit court shall immediately enter a satisfaction of the judgment on the judgment and lien docket. The department shall send a copy of the satisfaction to the employer.

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

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

(f) The department may recover any penalties due under this section by levy by application of the provisions of s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) INTERDEPARTMENTAL COOPERATION. The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary and as permitted by law to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

Malaise, Gordon

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Tuesday, March 23, 2010 7:01 PM
To: Kuesel, Jeffery; Malaise, Gordon
Subject: Worker classification compliance

Attachments: Worker Classification Compliance Draft Legislation 032410.doc

Jeff and Gordon:

I am forwarding a draft bill regarding worker classification compliance that I have discussed with Jeff today. I understand Senator Wirch will be interested in it, presumably to introduce it.

Gordon, I will appreciate your review of the draft and an opportunity to discuss it at your earliest convenience. Thanks.
Dan



Worker
Classification Compliar

Proposed legislation: Worker Classification Compliance

Create: §103.____ Worker Classification Compliance.

(1) OFFICE OF WORKER CLASSIFICATION COMPLIANCE. (a) The department shall create an office of worker classification compliance to educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) SCOPE AND DEFINITION. This section applies only to employing units engaged in construction and individuals performing services for such employing units. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(3) COMPLIANCE REQUIREMENTS. (a) For purposes of this section, an employer of one or more employees shall be required to prove that it has:

1. Maintained records identifying its workers, including without limitation the name, address and social security number of each worker.

2. Maintained workers compensation coverage for its employees as required by s. 102.28(2)(a).

3. Filed new hire reports and information as required by s. 103.05.

4. Maintained records of hours worked, wages paid to employees and deductions from wages as required by s. 103.85 and chapter 109.

5. Provided accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.

6. Registered with the department as an employer subject to the unemployment insurance law as defined in s. 108.02(13).

(b) For purposes of this section, an employer-employee relationship shall be presumed to exist when services are performed for pay by an individual for an employing unit, unless the employing unit demonstrates that the individual is not an employee for purposes of par. (3)(a)2. under s. 102.____; for purposes of par. (3)(a)4. under s. 109.01(1r), for purposes of par. (3)(a) 3., 4., and 5. under s. 103.001(5); and for purposes of par. (3)(a)6. under s. 108.02(12).

(c) No provision of this section may be contravened or set aside by private agreement.

(4) COMPLIANCE INVESTIGATIONS. (a) For the purpose of determining whether or not an employing unit has demonstrated compliance with the requirements of sub. (3), the department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identity and activities of workers at an employing unit's place of business or work site;

2. Enter and inspect any place of business or employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;

3. Question and obtain statements in writing from an employing unit, employee and other persons in the place of business or employment or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers;

4. Issue stop work orders; and

5. Obtain judicial enforcement of a stop work order.

The department shall have the authority to conduct its investigations under this subsection at any location where construction work is performed by or for an employing unit and to inspect records and documents maintained at any place of business or other location where any such records or documents are maintained by the employing unit or its agents.

(5) STOP WORK ORDERS AND CIVIL PENALTIES. (a) Whenever the department determines, following an investigation under sub. (4), that an employing unit has failed to demonstrate compliance with the requirements of sub. (3), the department may serve the employing unit with a notice of its intent to issue an order to the employing unit to stop work performed for the employing unit at the locations specified in the notice. The notice will advise the employing unit that it will have three days within which to produce information satisfactory to the department that the employing unit is in compliance with the requirements of sub. (3) at each location specified in the notice.

(b) In the event that the department determines based upon all information provided to it by the employing unit on or before the third day following service of the notice under sub. (a) that the employing unit has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employing unit to cease all work activities at the locations specified in the notice and in that event the department shall serve the order on the employing unit. Such order shall take effect immediately upon its service upon the employing unit and remain in effect until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty to the department for each day that the department determines the employing unit was not in compliance with the requirements of sub. (3). The penalty shall accrue in the amount of \$250 per day from the first date of the employing unit's non-compliance following the start of the department's investigation until the employing unit ceases work on the work site in question or, if the employing unit does not cease work, until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(6) APPEALS, HEARINGS AND REVIEW OF DECISIONS. (a) Any employing unit aggrieved by the imposition of an order to stop work or assessing a civil penalty under sub. (5) shall be provided a reasonable and prompt opportunity to be heard. The employing unit shall have ten days from the date of service of the order to request a hearing to review such order. An employing unit may appeal an order to stop work by filing a written request for a hearing with the agent of the department on the work site on a form to be provided by the department with the order, or by filing a request for hearing with the department in the manner prescribed by the order. In the event that the employing unit fails to file a timely request for hearing, the order of the department to stop work or assessing a civil penalty will be final. Any employing unit that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless the employing unit provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing requested shall be held before an appeal tribunal established as provided by s. 108.09(3). Section 108.09 (5) shall apply to the proceedings before such appeal tribunal. The appeal tribunal shall issue a decision in an appeal within seven days of the date of the hearing. The appeal tribunal may affirm, reverse or modify the order to stop work and assessing a penalty.

(c) If the appeal tribunal finds that the employing unit has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall rescind the order to stop work and assessing the penalty under sub. (5).

(d) If the appeal tribunal finds that the employing unit has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employing unit provides evidence, satisfactory to the department of having complied with the requirements of sub. (3), and pays the penalty assessed under sub. (5).

(e) A penalty assessed by an appeal tribunal shall accrue from the first day that it finds that the employing unit was not in compliance with the requirements of sub. (3) following the start of the investigation by the department until the employing unit stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employing unit provides evidence satisfactory to the department that it has complied with the requirements of sub. (3) subsequent to the decision.

(f) A final decision by an appeal tribunal overturning a stop work order shall overturn any penalty assessed by the order.

(h) Proceedings to review an appeal tribunal decision issued under this section shall be initiated and conducted in accordance with s. 108.10. The stop work order shall not be stayed during the pendency of review of an appeal tribunal decision affirming an order to stop work.

(i) An employer that violates a final order to stop work or final decision affirming such an order shall be assessed a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased.

(7) EFFECT OF DECISIONS. (a) The investigation and the decision of the department that an employing unit failed to demonstrate compliance with the requirements of sub. (3) is final and binding on the employing unit if not appealed timely. An appeal tribunal decision issued under this section shall be final if no petition for review is timely filed pursuant to s. 108.10.

(b) This section shall not preclude or affect penalties or remedies provided by other provisions of law.

(8) LIENS AND ENFORCEMENT AUTHORITY. The department may enforce any penalties due under this section pursuant to s. 108.22 and by levy pursuant to s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) INTERDEPARTMENTAL COOPERATION. The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

UI

willful misclassification

WC

safety - Commerce

Wage & hour

insurance

withholding - SS & MA - DOR

many loans, etc - DOJ, ADA

worker records - pay stubs - hours worked, vacation, deductions

wage payments - wage claims records, hours, overtime

file reports - new hires

obtain insurance - UI & WC

Problems

- Misclassification employees as ind. contractor in construction industry
- Underground economy - pay in cash off the books

Investigations

= not exactly "misclassification"

- enforce statutes

- inspect worksites visit ensure works properly classified

- issue stop work orders

- refer to other agencies, e.g. DOR for tax ~~Commerce for safety~~
~~Contractor registration~~

Commerce for Contractor Registration

See

Stop work order - Commerce - State Bldg. Code

appeal on the spot or show compliance w/in time frame

= Investigate & issue stop work order

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Com 3.13

10.115(6)

~~6.15(1)(a)~~

NR 120.27

128.21

~~128.47~~

~~128.68~~

152 A.12.4

B

153.32

CT PA 7-89

NJ A 4009

NY A 6163

GA 440-107

MA GL 152.25C

3973

Comm 4 attys
 JTK
 JK
 RNK

- placement in ch. 108 (80% purposes outside 108)
- definition of "construction", probably need connecting provisions in other chapters
- "employer" + "employee" definitions - appropriateness, esp when outside ch. 108.
- non-statutory terms "UI Act #"
 investigative activity + enforcement authority probably overlaps other chapters - must search + reconcile any overlap.

Will DWD enforce laws administered by Comm + DOR? How can that work legally? - Novel. Better procedure to report suspected violation + evidence to other agencies.

- use of UI staff to ~~enforce~~ investigate violations of + enforce non-UI laws
- overlap w/ ~~SSB 108.10 + 108.22~~ 108.10 + 108.22
- not appropriate to enforce NON-UI laws under Ch. 108 and deposit for ~~penalty~~ ~~intell~~ ~~acts~~ intell acts.
- wages must be paid (suppose position is not covered under min wage laws; employee culpability)
- 71.64(6m) seems to be totally unrelated

Kuesel, Jeffery

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Monday, December 21, 2009 3:45 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD
Subject: FW: Worker classification legislation

Attachments: Plain language re misclassification law 121509.doc; Worker Classification Compliance Draft Legislation 121509 final.doc; Worker Misclassification Task Force Report.pdf

Jeff:
Attached are the latest draft of the department's worker classification bill and a summary prepared for the UI Advisory Council.



Plain language re
misclassific...



Worker
Classification Compliar

Attached is a report of the Task Force, which was the basis for the draft bill.



Worker
sclassification Task

Dan

Worker classification

Funding - current precedents for shared funding of
 departmental functions.
 Positions from CPR - legislative or JAC
 next Budget Act 9/11

What is "classification"? ee vs ind cont?
 Fed one er vs. ee of another?

Defender of construction 42 USC 3791 (a) (4)
 a/tg. 108.18 (2) (c)
 283.01 (2)

Approach - define "employee" broadly - "any person who
 employs one or more ees."
 Define "employee" broadly but insert
 exceptions in (3) (b)

(3) (a) How is it req'd to prove?

6. "Registered with dept under s. 108.02 (13)

(4) (a) Question & obtain statements - not directly
 enforceable

(separate process for obtaining testimony & records)

5. "Enforce the terms of a subpoena order"

6. "Perform any other act necessary to ensure compliance"
 possibly too vague to actually apply - more specificity may
 be needed.

(6) ^(a) All work sites & places of employment.

can Appeal tribunals be used for non-UI violations?

deposit of civil penalties for non-UI violations

(6)(a) interplay of violation / penalty per day & stop work order
cessation of work at site vs. work at all sites

(b) How modified? reduce \$ Amt?

(e) Increase by \$500 for affirmative or modification

(i) final order to stop work (or vs. final decision
after such an order - difference? overlap?

(7) non preclusion - what does this do?

(8) UI purposes only.

Proposed legislation: Worker Classification Compliance

Create: §103. __ Worker Classification Compliance.

(1) OFFICE OF WORKER CLASSIFICATION COMPLIANCE. (a) The department shall create an office of worker classification compliance to educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments in the investigation and enforcement of laws dependent on proper classification of employees, refer complaints of misclassification to other departments, and order employers to stop work and pay penalties as provided in this section.

(2) SCOPE AND DEFINITION. This section applies only to employing units engaged in construction and individuals performing services for such employing units. For purposes of this section the term "construction" is defined as that term is used in s. 108.18(2)(c).

(3) COMPLIANCE REQUIREMENTS. (a) For purposes of this section, an employer of one or more employees shall be required to prove that it has:

1. Maintained records identifying its workers, including without limitation the name, address and social security number of each worker.
2. Maintained workers compensation coverage for its employees as required by s. 102.28(2)(a).
3. Filed new hire reports and information as required by s. 103.05.
4. Maintained records of hours worked, wages paid and to employees and deductions from wages as required by s. 103.85 and chapter 109.
5. Provided accurate and timely written statements to its employees of the nature and amounts of deductions from wages paid to employees under s. 103.457.
6. Registered with department as an employer subject to the unemployment insurance law, s. 108.02(13).

(b) For purposes of this section, an employer-employee relationship shall be presumed to exist when services are performed for pay by an individual for an employing unit, unless the employing unit demonstrates that the individual is not an employee for purposes of par. (3)(a)2. under s. 102. __; for purposes of par. (3)(a)4. under s. 109.01(1r), for purposes of par. (3)(a) 3., 4., and 5. under s. 103.001(5); and for purposes of par. (3)(a)6. under s. 108.02(12).

(c) No provision of this section may be contravened or set aside by private agreement.

(4) COMPLIANCE INVESTIGATIONS. (a) For the purpose of determining whether or not an employing unit has demonstrated compliance with the requirements of sub. (3), the department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Determine the identity and activities of workers at an employing unit's place of business or work site;
2. Enter and inspect any place of business, employment or work site and examine and copy any or all books, registers, payrolls, withholdings of wages, records of work activity and hours of work, and records or indicia of employee status, including without limitation those documents and records required by law to be made, kept and preserved;
3. Question and obtain statements in writing from an employing unit, employee and other persons in the premises, place of business or employment, or work site with respect to the payment of wages, hours worked, names and addresses of workers, and other information pertaining to remuneration of workers and the nature and extent of services performed by workers;
4. Issue stop work orders;
5. Enforce the terms of a stop work order; and
6. ^{Take} Perform any other actions necessary to ensure compliance with this section.

(5) **ASSISTANCE BY LAW ENFORCEMENT.** Any law enforcement agency shall, at the request of the department, render any assistance necessary to carry out the provisions of this section, including but not limited to preventing any employee or other persons from remaining at a place of employment or work site after a stop work order has taken effect.

(6) **STOP WORK ORDERS AND CIVIL PENALTIES.** Whenever the department determines that an employing unit has failed to demonstrate compliance with the requirements of sub. (3), the department may order the employing unit to cease business operations at the work sites or places of employment of said employing unit. In that event the department shall serve an order on the employing unit requiring the employing unit to stop work at the work site specified in the order. Such order shall take effect immediately upon its service upon the employing unit unless the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3) and pays a civil penalty into the administrative account under s. 108.20 in the amount of \$250 per day for each day such employing unit was not in compliance with the requirements of sub. (3). The penalty shall accrue from the first date of the employing unit's non-compliance until the employing unit ceases work on the work site in question or, if the employing unit does not cease work, until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3). The order to stop work shall remain in effect until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3), and pays any civil penalty issued under this subsection.

(6) **APPEALS, HEARINGS AND REVIEW OF DECISIONS.** (a) Any employing unit aggrieved by the imposition of an order to stop work or imposing a civil penalty shall be provided a reasonable and prompt opportunity to be heard. The employing unit shall have ten days from the date of service of the order to request a hearing to review such order. Any employing unit that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall be automatically stayed during the pendency of any timely filed request for hearing. The penalty assessed under sub. (5) shall continue to accrue notwithstanding the stay of the order to stop work unless the employing unit provides evidence satisfactory and timely notice to the department of having ceased work on the work site in question.

(b) A hearing requested shall be held before an appeal tribunal established as provided by s. 108.09(3). Section 108.09 (5) shall apply to the proceedings before such appeal tribunal. The appeal tribunal shall issue a decision in an appeal within seven days of the date of the hearing. The appeal tribunal may affirm, reverse or modify the order to stop work or to assess a penalty.

(c) If the appeal tribunal finds that the employing unit has at all times been in compliance with the requirements of sub. (3), the appeal tribunal shall rescind the order to stop work and assessing the penalty under sub. (5).

(d) If the appeal tribunal finds that the employing unit has not complied with the requirements of sub. (3), the stay of the order to stop work shall be deemed lifted by issuance of the appeal tribunal decision. An order to stop work affirmed by an appeal tribunal shall remain in effect until the employing unit provides evidence, satisfactory to the department of having complied with the requirements of sub. (3), and pays any civil penalty assessed under sub. (6).

(e) If the appeal tribunal affirms or modifies a penalty assessed by the department, the penalty shall be increased in amount to \$500 per day. A penalty assessed by an appeal tribunal shall accrue from the first day that it finds that the employing unit was not in compliance with the requirements of sub. (3) until the employing unit stops work at the work site in question or, prior to the decision, has stopped work at the work site in question, or until the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (3).

(f) A final decision by an appeal tribunal overturning a stop work order shall overturn any penalty assessed by the order.

(h) Proceedings to review an appeal tribunal decision issued under this section shall be initiated and conducted in accordance with s. 108.10. The stop work order shall not be stayed during the pendency of review of an appeal tribunal decision affirming an order to stop work. An appeal tribunal decision issued under this section shall be final if no petition for review is timely filed pursuant to s. 108.10.

(i) An employer that violates a final order to stop work or final decision affirming such an order shall be assessed a penalty of \$1,000 per day, in addition to other penalties, until the violation is ceased.

(7) **NON-PRECLUSIVE EFFECT OF DECISIONS.** (a) The investigation and the decision of the department as to whether an employing unit failed to demonstrate compliance with the requirements of sub. (3) may be given substantial weight by the department in enforcing statutes other than this section that the department is charged to enforce.

(b) This section shall not preclude or affect penalties or remedies provided by other provisions of law.

(8) **LIENS AND ENFORCEMENT AUTHORITY.** The department may enforce any penalties due under this section pursuant to s. 108.22 and by levy pursuant to s. 108.225. The term "debt" for purpose of s. 108.225 shall include penalties imposed under this section.

(9) **INTERDEPARTMENTAL COOPERATION.** The department shall cooperate with other departments and state and local agencies in the regulation and enforcement of worker classification and registration of contractors, and these entities may share data as necessary to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (3) to other state agencies for further enforcement.

108.18(2)(c)

(c) An employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects shall pay contributions for each of the first 3 calendar years at the average rate for construction industry employers as determined by the department on each computation date, rounded up to the next highest rate. This rate may in no case be more than the maximum rate specified in the schedule in effect for the year of the computation under sub. (4).

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TOC: [United States Code Service - Titles 1 through 50 > / > DEFINITIONS > § 3791. General provisions](#)

Terms: **"construction means"** ([Edit Search](#) | [Suggest Terms for My Search](#))

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42 USCS § 3791

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*** CURRENT THROUGH PL 111-119, APPROVED 12/21/2009, WITH A GAP OF PL 111-118 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 46. JUSTICE SYSTEM IMPROVEMENT
DEFINITIONS

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 [Interpretive Notes and Decisions](#)

 [History: Ancillary Laws and Directives](#)

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42 USCS § 3791

§ 3791. General provisions

(a) Definitions. As used in this title--

(1) "criminal justice" means activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands: *Provided*, That for the purposes of section 505(a) [42 USCS § 3755(a)], American Samoa and the Commonwealth of the Northern Mariana Islands shall be considered as one state and that for these purposes 67 per centum of the amounts allocated shall be allocated to American Samoa, and 33 per centum to the Commonwealth of the Northern Mariana Islands.[:];

(3) "unit of local government" means--

(A) any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State;

(B) any law enforcement district or judicial enforcement district that--

(i) is established under applicable State law; and

(ii) has the authority to, in a manner independent of other State entities, establish a budget and impose taxes;

(C) an Indian Tribe that performs law enforcement functions, as determined by the Secretary of the Interior; or

(D) for the purposes of assistance eligibility, any agency of the government of the District of Columbia or the Federal Government that performs law enforcement functions in and for--

(i) the District of Columbia; or

(ii) any Trust Territory of the United States;

(4) "**construction**" means the erection, acquisition, renovation, repairs, remodeling, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor;

(5) "combination" as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program, plan, or project;

(6) "public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(7) "correctional facility" means any place for the confinement or rehabilitation of offenders or individuals charged

283.01(2)

(2) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises.

2009 DRAFTING REQUEST

Bill

Received: 12/09/2009

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Workforce Development 7-1406**

By/Representing: **Dan LaRocque**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous
Employ Priv - miscellaneous
Employ Pub - miscellaneous
Unemployment Insurance
Employ Priv - worker's comp
Buildings/Safety - misc.**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Worker classification compliance

Instructions:

Per attached E mail, 12/9/09.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel			_____			

FE Sent For:

<END>

Kuesel, Jeffery

From: LaRocque, Daniel J - DWD [Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Wednesday, December 09, 2009 4:41 PM
To: Kuesel, Jeffery
Subject: RE: UI Bill - worker classification legislation

Your assumption is correct. DOR and the other divisions have talked quite a bit. They have not seen this bill yet.

From: Kuesel, Jeffery [mailto:Jeffery.Kuesel@legis.wisconsin.gov]
Sent: Wednesday, December 09, 2009 4:40 PM
To: LaRocque, Daniel J - DWD
Subject: RE: UI Bill - worker classification legislation

Dan,

This will confirm I have your request and will enter it. I will try to get back within the next few working days with any preliminary questions. I assume that the UI Division is taking the lead on this and the other divisions and DOR will not be pursuing it independently.

Jeff

From: LaRocque, Daniel J - DWD [mailto:Daniel.LaRocque@dwd.wisconsin.gov]
Sent: Wednesday, December 09, 2009 3:52 PM
To: Kuesel, Jeffery
Cc: Schwalbe, Tracey L - DWD
Subject: UI Bill - worker classification legislation

Jeff:

I believe I mentioned some time ago that the department is interested in legislation to bolster enforcement of classification of employees. It would cross lines of unemployment, workers comp, wage and hour enforcement and perhaps revenue.

In June 2009 a Task Force led by Hal Bergan issued a report recommending legislation. Tracey was very involved and can provide ou a copy of the report.

Attached is a draft bill. It is possible that the UI Advisory Council will approve the concept and perhaps this draft as early as next week, December 16. Labor is going to push for it.

Let me know when you are available to provide us with comments and questions on your first review of the draft. Thanks.

Dan

<< File: Worker Classification Compliance Draft Legislation 120909.doc >>

Worker Classification Draft Legislation

Create: §108.25 Worker Classification Compliance; stop work orders; penalties; liens.

(1) OFFICE OF WORKER CLASSIFICATION COMPLIANCE. (a) The department shall create an office of worker classification compliance to educate the public about worker classification, receive and investigate complaints about worker classification, investigate potential misclassification, cooperate with other departments, refer complaints to other departments as appropriate, and issue stop work orders as provided in this section.

(b) This section applies only to individuals performing services for employers engaged in construction.

(2) COMPLIANCE INVESTIGATIONS. (a) For purposes of this section, employing units shall be required to prove to the department compliance with the following:

1. Maintain worker's compensation coverage under s. 102.28(2)(a) for its employees.
2. Provide new hire information and reports for its employees under s. 103.05.
3. State deductions from wages paid to employees under s. 103.457.
4. Maintain records of hours worked and wages paid to employees under s. 103.85 and chapter 109.
5. Obtain an unemployment insurance account number under this chapter.
6. Maintain income tax withholding tax number under ch. 71.
7. Withhold of contractor payments from 1099-MISC under s. 71.64(6m) for certain contractors.
8. For construction contractors, register as contractor with the Department of Commerce.
9. Maintain records identifying all workers by name, address and social security number.

(b) For purposes of this section, an employer-employee relationship shall be presumed to exist when work is performed by an individual, or by a single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, for remuneration paid by an employing unit, unless the employing unit demonstrates that the individual is not an employee under the [applicable statutory provisions] s. 71.____; 108.02(12); 102.____; 103.____; 104.____; 109.____. No provision of this section may be contravened or set aside by private agreement.

(c) In determining whether or not an employing unit has demonstrated clear and convincing compliance with the requirements of par. (a), the department shall have the authority to conduct investigations for the purpose of ensuring compliance, including but not limited to the authority to:

1. Enter and inspect any place of business, employment or work site and examine and copy, wholly or partly, any or all books, registers, payrolls, records of activity and hours work and employment-related records or indicia of employee status, including without limitation those required by law to be made, kept and preserved;
2. Question an employing unit, employee or other person in the premises, place of business or employment or work site;
3. Require from any employing unit statements in writing, with respect to the payment of wages, hours, names, addresses, and such other information pertaining to remuneration and the nature and extent of services performed by individuals;
4. Investigate such facts, conditions or matters as the department may deem necessary or appropriate to determine whether an employing unit is out of compliance with the requirements of par. (a);
5. Investigate the number of workers and the activities of workers at the employing unit's place of business or job site,
6. Issue stop work orders;
7. Enforce the terms of a stop work order; and
8. Perform any other actions necessary to ensure compliance with this section.

(3) ASSISTANCE BY LAW ENFORCEMENT. Any law enforcement agency shall, at the request of the department, render any assistance necessary to carry out the provisions of this section, including but not limited to preventing any employee or other persons from remaining at a place of employment or job site after a stop work order has taken effect.

(4) STOP WORK ORDERS AND CIVIL PENALTIES. Whenever the department determines that an employing unit has failed to demonstrate compliance with the requirements of sub. (2), a stop work order may be served on the employing unit, requiring the cessation of business operations at the job sites or places of employment of said employing unit. Such order shall take effect immediately upon its service upon the employing unit, unless the employing unit provides evidence satisfactory to the department of having complied with the requirements of sub. (2) and pays a civil penalty

into the administrative account under s. 108.20 in the amount of \$250 per day for each day such employing unit was not in compliance with the requirements of sub. (2), counting the first date of the employing unit's non-compliance as the first day and date of payment of the penalty and of production of evidence of full compliance of all required payments due as the final day.

(5) APPEALS. (a) Any employing unit aggrieved by the imposition of an order to stop work order or imposing a civil penalty shall be provided a reasonable and prompt opportunity to be heard. The employing unit shall have ten days from the date of service of the order to request a hearing to review such order. Any employing unit that timely files a request for a hearing shall be granted a hearing within fourteen days of the department's receipt of the request for hearing. The stop work order shall not be in effect during the pendency of any timely filed request for hearing.

(b) Any hearing requested shall be held before an appeal tribunal established as provided by s. 108.09(3). Section 108.09 (5) shall apply to the proceedings before such appeal tribunal. Section 108.10 shall apply to any proceedings on review of the appeal tribunal decision.

(c) The appeal tribunal shall issue a decision on any appeal within seven days of the date of the hearing. Any stop work order and monetary penalty shall be rescinded if the appeal tribunal finds at the hearing that the employing unit has at all times been in compliance with the requirements of sub. (2). If the appeal tribunal finds at the hearing that the employing unit has not complied with the requirements of sub. (2), the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employing unit provides evidence, satisfactory to the department of having complied with the requirements of sub. (2), and pays a civil penalty into the administrative account in the amount of \$500 per day for each day the employing unit was not in compliance with the requirements of sub. (2), counting the first date of the employing unit's non-compliance as the first day and the date of payment of the penalty and of production of evidence of full payment of all required contributions as the final day. A stop work order and any monetary penalties assessed under this section by the department after a hearing as authorized in this section shall be final at the expiration of thirty days if no appeal is taken pursuant to s. 108.09(6).

(6) NON-PRECLUSIVE EFFECT. (a) The investigation and the decision of the department whether an employing unit failed to demonstrate compliance with the requirements of sub. (2) may be given substantial weight by any department of the state in enforcing statutes that department is charged to enforce. **[Comment: I am not sure what is intended by the wording of this provision.]**

(b) The provision of penalties under this section shall not have any effect on any other penalties or remedies that may be available under any other provision of law.

(7) LIENS AND ENFORCEMENT AUTHORITY. (a) Any judgments obtained by the department requiring employing unit contributions or other payments, and any penalties due pursuant to the service of a stop work order under this section shall, until collected, constitute a lien upon the entire interest of the employing unit, legal or equitable, in any property, real or personal, tangible or intangible; provided, however, that such lien shall be subordinate to claims for unpaid wages and any prior recorded liens; and provided, further, that no lien created by this section shall be valid against a subsequent purchaser or mortgagee in good faith and for value of real or personal property from or of such employing unit, or against a subsequent attaching creditor, unless, with respect to real estate of the employing unit, a notice of such lien is recorded in the registry of deeds for the county where such real estate is located, and, with respect to personal property of the employing unit, said notice is recorded with the clerk of the county where such personal property is located.

(b) The department shall have authority to enforce any penalties due pursuant to this section by levy pursuant to s. 108.225. The term "debt" for purpose of s. 108.225 shall also include penalties imposed pursuant to this section.

(8) WAGES FOR EMPLOYEES DURING STOP WORK ORDERS. Any employee affected by a stop work order pursuant to this section shall be paid at his or her regular rate of pay, but in no event less than the minimum wage as required by state or federal wage and hour laws, whichever is higher, for the first ten days lost pursuant to such order and any time lost pursuant to this section not exceeding ten days shall be considered time worked under the provisions of ch. 103.

[Comment: Did the Task Force endorse this provision?]

(9) INTERDEPARTMENTAL COOPERATION. The department shall cooperate with other departments and state and local agencies, and these entities may share data as necessary to allow the department to perform the requirements of this section. The department may refer failures to comply with the requirements of sub. (2) with other state agencies for further enforcement.

Also Create [from DOR]:

71.64 (6m) WITHHOLDING FROM PAYMENTS MADE TO PERSONS WHO ARE NOT EMPLOYEES. (a) For purposes of this subsection, "contractor" means a person carrying on a trade or business described in industry code numbers 230000 through 238990 of the North American Industry Classification System.

(b) Notwithstanding sub. (6)(b), a contractor who makes payments to an individual, or single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, carrying on a trade or business described in par. (a) must deduct and withhold one percent of the payment as Wisconsin withholding tax when the amount the contractor paid to that individual, or single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, during the calendar year exceeds \$600.

(c) A payment subject to withholding under this subsection must be treated as if the payment were a wage paid by an employer to an employee. The requirements in the definitions of "employee" and "employer" in s. 71.63 (2) and (3) apply in determining whether withholding tax applies under this subsection, but without regard to whether the contractor or the individual, or single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, otherwise satisfy the definition of an employer or an employee. Each recipient of a payment subject to withholding under this subsection must furnish the contractor with a statement of the recipient's name, address, and social security number.

[Comment: I do not think there is support for the withholding idea. It is in this draft only because the Task Force listed it. I expect we will be dropping it out. The special penalties for contractors are beyond the Report, I believe, so I have deleted them.]

Legislative Proposal for Worker Classification Compliance

Some employers fail to comply with the statutory requirements for unemployment insurance, workers compensation, workplace safety, wage and hour, and income tax and FICA (Social Security and Medicare) withholdings. Employers who erroneously regard their workers as independent contractors, based on that classification, fail to maintain worker records, pay required wages, file reports, obtain insurance, and/or pay taxes or otherwise support worker safety net programs.

Misclassification results from legitimate misunderstanding of the law in many instances. And in other cases, it is the product of intentional disregard of statutory requirements. Some employers evade the law by paying cash and failing to account for worker services as either independent contractors or employees.

Misclassification of employees denies the workers the benefits and protections to which they are entitled and which have been determined to be necessary for program funding and a sound and stable economy. The result is to shift costs to taxpayers and compliant employers; and an unlawful competitive advantage of noncompliant over compliant employers. Worker misclassification exacts a heavy social cost to workers and is an urgent public problem affecting the health, welfare and economy of the people of Wisconsin.

Wisconsin's Taskforce on Worker Misclassification, which included representatives from labor and the construction industry, sought comments on the misclassification phenomenon from workers, labor representatives, contractors and construction trade groups, as well as the Departments of Revenue, Commerce, and Workforce Development. The June 2009 Task Force Report highlighted misclassification practices in the construction industry and reviewed the efforts of other states to induce compliance with the laws requiring proper worker classification. Among the solutions devised in other states that appear to have had the greatest positive impact are utilization of trained investigators dedicated to enforcing worker protection statutes to visit employers on work sites, investigate and issue orders to stop work until compliance is demonstrated.

The Task Force recommended legislation in Wisconsin to authorize "quick action" in response to observed noncompliance with state laws requiring proper worker classification, and "prompt resolution of disputed issues." The Task Force cited as its primary objective the need to "focus primary attention on the worst offenders and limit impact on contractors who play by the rules" and to deter violations and induce voluntary compliance by employers. The department has drafted proposed bill language that is consistent with the recommendations contained in the Task Force Report.

The draft bill:

- Creates an office of worker classification compliance to educate the public about worker classification, investigate complaints, refer complaints to other agencies for further action, and issue stop work orders and monetary penalties.
- Authorizes the department to investigate on the construction work site the need for and existence of workers compensation coverage, unemployment insurance registration, new hire reports and employer records of the activity, hours, wages and identification of workers.
- Authorizes the department to issue stop work orders, collect penalties and issue decisions on appeals within 21 days of an employer's request for a hearing.
- Promotes law enforcement support, interdepartmental cooperation and department referrals to other agencies for audits and investigation, which will enable enhanced enforcement of the laws governing tax collections, contractor registration and building safety.