TASK FORCE ON PAYROLL FRAUD AND WORKER MISCLASSIFICATION REPORT

2022

STATE OF WISCONSIN
DWD
Department of Workforce Development

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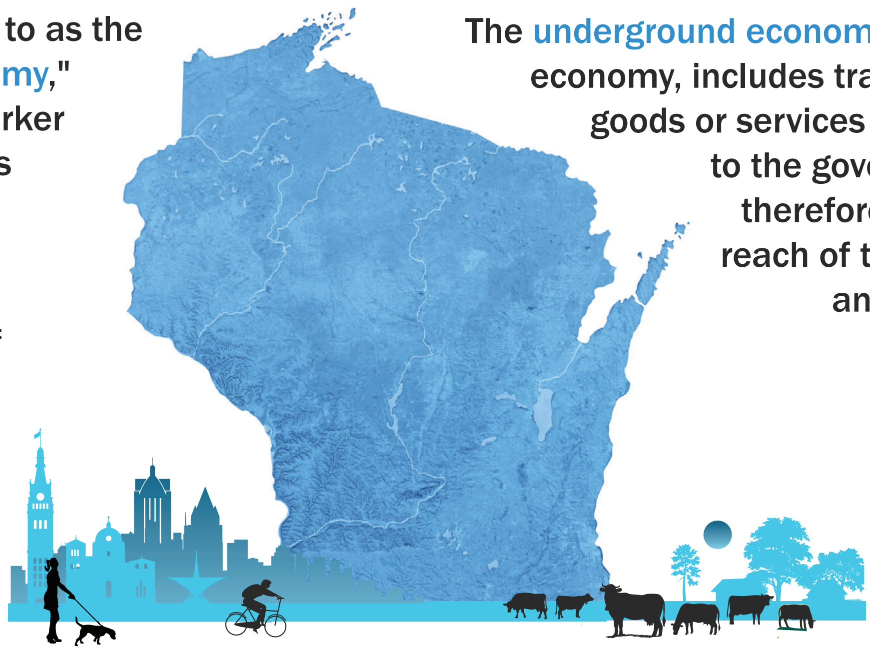
Sometimes referred to as the "underground economy," payroll fraud and worker misclassification has significant impact on our state government and the taxpayers of Wisconsin.



The underground economy, or shadow economy, includes transactions of goods or services not reported to the government and therefore beyond the reach of tax collectors and regulators.

MESSAGE FROM CHAIR AMY PECHACEK

In 2019, Governor Evers signed Executive Order #20, creating the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification because he recognized the significant impact these issues have on our state government and the taxpayers of Wisconsin. Since then, members of the task force and public citizens have stepped up to serve on work groups and worked diligently to identify solutions that prevent payroll fraud and worker misclassification. By sharing and investigating resources between agencies and working cooperatively with business, labor, and community groups to raise public awareness, members of the task force have made important strides towards combating worker misclassification in Wisconsin.

The efforts of this task force are invaluable. The recommendations submitted over the past three years have been critical in laying the path forward for how Wisconsin can and should address issues of worker misclassification and payroll fraud. With a clear roadmap in place and in consultation with members, Governor Evers has decided to end the Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification. I thank the members for their hard work and dedication to helping inform the public about the magnitude of these issues and how we can all work to resolve them.

Of course, the task force ending does not mean the work stops. Implementing task force recommendations, past and present, remains a top priority for Governor Evers and his entire administration. The Wisconsin Departments of Workforce Development, Revenue, and Justice will continue to collaborate on identifying perpetrators and pursuing joint enforcement actions as appropriate to hold them accountable and deter others from following suit. Nevertheless, we will rely on the members of this task force and all of our state's workers and law-abiding employers to continue building the public support necessary to ensure the State Legislature updates the statutes necessary to enforce greater compliance and cooperation.

On behalf of the Department of Workforce Development and the taxpayers of Wisconsin, thank you once again.

Secretary-designee, Amy Pechacek
Department of Workforce Development

Task Force Membership

The Task Force consists of the following members:

- Amy Pechacek (Task Force Chair), Secretary-designee, Department of Workforce Development (DWD) (Effective June 2021)
- Danielle Williams, Assistant Deputy Secretary, Department of Workforce Development (DWD) (Resigned June 2021)
- Michael Morris, Assistant Attorney General, Department of Justice
- Maria Guerra Lapacek, Assistant Deputy Secretary, Department of Revenue
- Nathan Houdek, Commissioner of Insurance, Office of the Commissioner of Insurance
- Steve Peters, Administrator, DWD, Worker's Compensation Division
- Jesús Villa, Administrator, DWD, Equal Rights Division
- Jim Chiolino, Administrator, DWD Unemployment Insurance Division (Effective December 2021)
- Mark Reihl, Administrator, DWD Unemployment Insurance Division (Resigned November 2021)
- Dale Kooyenga, Wisconsin State Senator, District 5
- Robert Wirch, Wisconsin State Senator, District 22
- Rob Brooks, Wisconsin State Representative, District 60
- Christine Sinicki, Wisconsin State Representative, District 20
- Pete Braun, Founder, President and CEO, Wall-Tech
- Cynthia Buchko, General Counsel, Construction Business Group
- Andy Buck, Government Affairs Director, Painters and Allied Trades District Council 7
- Tim DeMinter, Business Manager, Financial Secretary/Treasurer, Ironworkers Local 383
- Jerry Shea, President, Market and Johnson (Resigned December 2021)
- Steuart Wilson, Business Representative, Local Union #18 Of the International Association of The Sheet Metal Air Rail and Transportation Workers

ACTIVITIES OF THE 2021 JOINT ENFORCEMENT TASK FORCE ON PAYROLL FRAUD AND WORKER MISCLASSIFICATION

The Task Force issued its 2020-2021 report March 1, 2021. The Report included seven recommendations, as well as several potential topics for further discussion and study by the Task Force in 2022.

The Task Force reconvened later in March, during which Assistant Deputy Secretary Danielle Williams began the meeting by thanking the members of the Task Force for their work and the recommendations they developed the previous year. She urged the group to continue its efforts to examine and develop approaches to combat payroll fraud and worker misclassification.

The Task Force decided to create working groups to examine those issues and enlist other subject matter experts to participate in the working groups, share their experience, and provide additional input. The groups met several times to develop recommendations for their respective areas and reached agreements on multiple recommended actions to present to the Task Force for consideration. While the groups researched their specific issues, the Task Force met again in June, September, and December 2021, and again in January 2022. At each Task Force meeting, members received status reports regarding work group activities related to the recommendations included in the 2021-2022 report, updates on any state and federal legislation that addressed the issue of worker classification and payroll fraud, as well as the progress of the two committees.

At the June 2021 Task Force meeting, Mariana Rodriguez, Director of the United Migrant Opportunity Services (UMOS) Latina Resource Center, and Javier Acevedo, Lead Victim Advocate, presented information to the Task Force about the prevalence of human trafficking in Wisconsin and the impact of human trafficking on payroll fraud and worker misclassification. The UMOS leaders shared details about the critical work the organization does to protect and serve victims of human trafficking in Wisconsin and discussed avenues for the Task Force to support the efforts of UMOS. After continued discussion at the September 2021 meeting, the Task Force directed the Employee Misclassification Education and Outreach Committee to integrate human trafficking awareness into its educational campaign.

To gain additional insight on how the practice of worker misclassification is directly affecting individuals in Wisconsin, the Task Force invited the public to comment at the Dec. 16, 2021, meeting and to share how worker classification issues have impacted their job, business, or workplace. Members of the public were also invited to submit written comments to DWD through a dedicated email box. There was one written public comment. Barbara Santiago of Fond Du Lac offered appreciation for the Task Force's efforts on the complex issue of worker classification and payroll fraud. Santiago emphasized the need for protection of workers who face this issue and wanted to "encourage solution-based measures providing a transition or resolution that will benefit and protect both parties." In the letter, Santiago shared a personal experience with worker misclassification when trying to file for unemployment insurance. Ultimately, Santiago urged the task force to explore solutions to this issue and consider options beyond enacting penalties due to the unique nature of each misclassification case.

Following months of research, analysis, and deliberation, the three work groups and two committees presented their recommended action items to the Task Force at the Dec. 16, 2021, meeting for inclusion in the 2022 report. After questions and discussion, the Task Force agreed upon the recommendations contained in this report.

THE EXTENT AND COSTS OF MISCLASSIFICATION AND RECOVERY EFFORTS

DWD Unemployment Insurance Division

The number of unemployment insurance (UI) claims related to the COVID-19 pandemic required the UI Division to prioritize claims processing over audit and worker classification investigations; nevertheless, UI Division auditors still conducted 1,709 audits and identified 3,365 misclassified workers in 2021. Due to the Division's efforts to detect worker misclassification, $780,000 was generated in UI taxes and interest. The number of misclassified workers the UI Division identified declined from 2020 to 2021; however, the unique challenges related to the COVID-19 pandemic affected the ability to conduct onsite field investigations. As a result, the decline in identified cases should not be interpreted as an actual decline in the number of misclassified workers in the state. Worksite investigations were conducted by experienced division investigators, many of whom have law enforcement backgrounds in white collar and economic crime investigations. Although hampered by the effects of the pandemic, the Division conducted 282 worker classification field investigations in 2021. In addition, investigative team members continued to present at construction industry events and meetings with organizations representing workers, labor union meetings, community organizations representing workers, and other public forums on worker classification.

DWD Worker's Compensation Division

Worker misclassification can lead to a loss of premiums for the insurance industry and higher premiums passed onto insured businesses. The Worker's Compensation Division (WCD) is unable to estimate the total costs to the worker's compensation program resulting from worker misclassification. However, the division did identify the amount of insurance premiums generated by new employers brought into compliance, much of which is related to misclassification. From 2012 to 2021, over $14.5 million in additional insurance premiums were generated from employers brought into compliace.

The WCD has a team of five consumer protection investigators who conduct investigations to help ensure that employers subject to the Worker's Compensation Act have proper worker's compensation insurance coverage. These investigators conduct approximately 23,000 investigations annually. The average penalty resulting from an investigation is $2,846.53 and the WCD assesses over $6 million in penalties annually.

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on claims filed by employees injured while working for illegally uninsured employers. Payments vary substantially from year to year, depending on the severity of claims accepted. The annual average for the last 10 years is $2.5 million. The WCD investigates and issues penalties against illegally uninsured employers to recover funds for UEF. There were approximately 360 injuries in UEF claims from 2012 to 2021, and of that total, 274 have class code information available. The industry groups, as defined by the Wisconsin Compensation Rating Bureau (WCRB), with the most injuries are:

1. Goods and Services (97, 35.4%)
2. Contracting (92, 33.6%)
3. Miscellaneous (52, 18.9%)
4. Manufacturing (18, 6.6%)
5. Office and Clerical (15, 5.5%)

There were approximately 18,150 UEF penalties issued against employers during 2012-2021 period. The industry groups, as defined by the Wisconsin Compensation Rating Bureau (WCRB), with the most penalties are:

1. Goods and Services (8,124, 44.8%)
2. Office and Clerical (5,186, 28.6%)
3. Contracting (2,695, 14.8%)
4. Miscellaneous (1,340, 7.4%)
5. Manufacturing (805, 4.4%)

The WCD is able to identify repeat offenders when it discovers any employer with multiple penalty accounts (vs. injury reimbursement accounts). There were approximately 1,460 multiple penalty accounts for employers from 2012 to 2021. Of that total, 1,379 have class code information available. The industry groups, as defined by the Wisconsin Compensation Rating Bureau (WCRB), with the most penalties issued against repeat offenders are:

1. Goods and Services (708, 51.3%)
2. Office and Clerical (268, 19.4%)
3. Contracting (208, 15.1%)
4. Miscellaneous (132, 9.6%)
5. Manufacturing (63, 4.6%)

DWD Equal Rights Division

The Equal Rights Division (ERD) enforces over 40 state laws covering labor standards and civil rights in employment, housing, and public accommodations. ERD also provides research and technical assistance to employers on how to comply with those laws. ERD staff members investigate complaints, identify law violations, work to resolve disputes among parties, and make determinations of liability. ERD is only able to address worker misclassification to the extent it relates to other labor standards issues, such as wage theft and minimum wage violations. As a result, ERD cannot actively seek out worker misclassifications cases and, while it does not maintain statistics on the matter, anecdotally ERD receives approximately five to 10 complaints a month on wage and hour matters where worker classification is an issue. Last year, ERD processed over 4,000 complaints and recovered over $700,000 in wages owed to Wisconsin workers.

Department of Revenue (DOR)

DOR estimates, based on the Department of Workforce Development's unemployment insurance (UI) audit data and U.S. Department of Labor projections, the total taxable wages underreported statewide for UI purposes is approximately $1.42 billion in calendar year 2021. Using an effective tax rate of 3.99% (the average rate for all workers in tax year 2021), $1.42 billion of unreported wages suggests approximately $56.7 million of personal income tax (PIT) revenue is foregone.

The decline in estimated PIT revenue foregone from 2019 to 2021 cannot be attributed to a reduction in misclassification, but rather a 10% decrease in taxes.

Rather, there are three identified factors that may have contributed to the decline:

- Total underreported wages could be higher than $1.42 billion to the extent that total wages paid exceed the $14,000 per employee per employer limit for wages subject to UI tax.
- Estimated total taxable wages underreported statewide for UI purposes in calendar year 2021, while the best figure available to estimate PIT revenue foregone, may be lower than reality based on the reduction in the number of identified misclassified workers due audit-related challenges created by the pandemic.
- In 2021, tax rates were lowered by both the 2021-23 Wisconsin State Budget and the impact of 2019 Wisconsin Act 10. Therefore, the average tax rate used to calculate the foregone PIT was lower than previous years.

The first two factors suggest the upper limit of foregone PIT could be greater than $56.7 million.

However, the actual amount of foregone revenue could also be less than $56.7 million for two reasons:

- First, for state personal income tax purposes, a worker who is misclassified as an independent contractor may still pay tax on their income by reporting a 1099-MISC instead of a W-2. Consequently, unreported income for PIT is likely to be significantly less than unreported wages for UI. PIT revenue will be foregone to the extent that earnings are altogether unreported, not just improperly reported for a misclassified worker.
- Second, some workers who are paid in cash may have a total income low enough that they would not have a filing requirement for personal income tax (for tax year 2021, a tax return is not required for a gross income level below $11,900 for filing single, or $22,130 if married filing jointly). It's also possible that a worker's income could be low enough to qualify for the refundable earned income tax credit, in which case not only would they not have a net tax liability, but they could receive a payment from the state.

Office of the Commissioner of Insurance (OCI)

With respect to the 2021 Task Force Report’s Recommendation 4, the Wisconsin Compensation Rating Bureau (WCRB) adopted changes to the remuneration definition found in the Wisconsin Basic Manual and filed the proposed changes with OCI on March 16, 2021. OCI approved the filing on April 2, 2021. Following OCI’s approval, the WCRB issued Circular Letter 3228 on April 23, 2021, to announce the approved changes to its members.

The WCRB supports the Task Force’s ongoing efforts to address payroll fraud and worker misclassification. The WCRB believes that the 2021 Task Force Report’s Recommendations 1-3 will need to be put into effect to meaningfully address payroll fraud and provide WCRB members with a call to action.

SUMMARY OF EDUCATION AND OUTREACH ACTIVITIES

Jesús Villa, Administrator of DWD's Equal Rights Division (ERD), leads the department's efforts to implement the Task Force's recommendation to "undertake an aggressive campaign to educate employers, employees, independent contractors, and the general public about misclassification issues."

The Employee Misclassification Education and Outreach Committee took several important steps in 2021 to educate employers, employees, independent contractors, and the general public about misclassification issues.

In May, the Committee surveyed the public regarding general awareness and attitudes about worker misclassification. While the survey was made available to the general public, the Committee executed a targeted push directed toward the construction industry, the industry perhaps most impacted by misclassification. The survey results will help further refine education and outreach tactics. The results also provide benchmarking of current public awareness and attitudes so the task force can better assess the impact of its activities.

The initial poll and subsequent push directed more toward the construction industry yielded 218 responses. Of that total, 89% expressed an understanding of worker misclassification. While 53% believed it definitely had not happened to them, 32% said they didn't think so. Another 8% thought they had been misclassified (5% definitely so). The remaining 7% said they didn't know. Forty-one percent of respondents who believe they were misclassified said the misclassification occurred within the last two years and 37% of them worked in the construction industry.

The survey also found that 92% of respondents think that employers who intentionally misclassify workers to avoid paying taxes and benefits are "cheating." Eighty-nine percent of respondents think that worker misclassification is bad for Wisconsin, and 95% think employers who intentionally misclassify workers should be held accountable. Finally, 74% of respondents believe worker misclassification is somewhat or very prevalent in Wisconsin. Overall, the survey suggests that the public is receptive to the message that "worker misclassification is cheating, and cheaters shouldn't win."

The employee misclassification website, poster, and flyer are published and available to the public. These materials are also available in Spanish. The Committee identified several areas of potential outreach and is working to secure funding to expand on these outreach efforts.

In 2022, DWD will continue targeted outreach efforts to Wisconsin's construction industry. DWD will also conduct targeted outreach to individuals entering or who have recently entered the workforce. Such outreach will target high school seniors, technical college students, and youth apprenticeship program participants in Wisconsin. DWD will also increase outreach to Spanish-speaking communities, a population identified as particularly vulnerable to worker misclassification and exploitation.

Finally, DWD will expand its outreach and education efforts to include information regarding labor trafficking. Labor trafficking is one of the most serious forms of labor exploitation, and usually goes hand in hand with employee misclassification. Though prevalent, including in Wisconsin, labor trafficking is underground and can be difficult to root out. It is also frequently misunderstood as including only sex trafficking. Expanding outreach and education efforts to increase awareness of labor trafficking, and resources available to combat it, is an important step to address this problem.

SUMMARY OF THE INTERAGENCY COORDINATED ENFORCEMENT EFFORTS

The Interagency Coordinated Enforcement Team (IACET) was created by Recommendation No. 2 of the 2020 Report issued by Governor Evers' Joint Task Force on Payroll Fraud and Worker Misclassification. The IACET was to be composed of the Office of the Commissioner of Insurance and the Departments of Workforce Development, Revenue, Justice, and Financial Institutions.

In February 2021, on behalf of the IACET, Maria Guerra Lapacek (Department of Revenue) reported to the Task Force four items of importance to the IACET:

1. Continuing efforts to facilitate DWD and DOR data-sharing on businesses engaged in misclassifying workers between DWD and DOR.

   Data-sharing agreements were strengthened to allow for data transfers from DWD to DOR. In the short-term, data sharing will be a manual transfer of information. However, the goal is to transfer data electronically to be used for audit selections supported by data analytics.
2. Recommending process and law changes to strengthen IACET's ability to identify and prosecute perpetrators.
3. Exploring avenues to include DOJ prosecutors at an earlier stage in investigations to expand DOJ prosecutors' involvement in IACET's investigations and processes.
4. Looking more closely at insurance fraud and further exploring how IACET can work with DWD's Worker's Compensation Division.

As a follow-up to these four items, the IACET reports the following:

1. The IACET has completed the process of strengthening data-sharing agreements to allow the safe data transfer of information between DWD and DOR.

   DOR received a batch of records from DWD's misclassification audits and has transferred this information to a data warehouse in DOR to be used for purposes of audit selections, utilizing data analytics available to DOR. The IACET hopes to make this data transfer fully electronic and complete the transfer on a regular basis to utilize aggregate data to make audit selection decisions that target chronic offenders in payroll fraud and misclassification.
2. With respect to law and process change recommendations, the IACET endorses the recommendations made by the DFI Registration Workgroup. (See Recommendations #2, #3, and #4) In addition to the three recommendations, (requiring disclosure of all members and managers of domestic and foreign LLCs at registration, include false filing provisions and penalties for false filings, and providing DFI limited enforcement authority to investigate and refer violations to the Attorney General), the IACET recommends that DFI also require Federal Employer Identification Numbers (FEIN) at registration. This will help match tax records to DFI registrations.
3. The IACET has created a smaller working group comprised of only DOR, DWD, and DOJ that will meet quarterly to review specific cases of recurring offenders for enforcement purposes.

   The group is limited to enforcement and investigative personnel with the ability to review the sensitive information. The group is composed of DOR's Office of Criminal Investigations; DOJ's Division of Legal Services, who will invite their Division of Criminal Investigations, and their Office of Crime Victim Services as needed; DWD's Unemployment Insurance Field

Audit Section, as well as their enforcement and legal affairs; and DWD's Worker's Compensation Bureau of Insurance Programs and Section Chief for the Uninsured Employers Fund.

This smaller working group will allow the DOJ prosecutors to be more involved in the earlier stages of investigations which may result in more successful prosecutions.

4. As the IACET understands other working groups were looking closely at Worker’s Compensation insurance fraud, we defer to their recommendations about Worker's Compensation payroll fraud and misclassification.

The IACET recognizes many of its recommendations require additional resources and statutory changes, such as changing the law to grant DFI the authority to investigate and enforce false or fraudulent filings and require DFI to collect additional information and filings. The information held by DFI is of particular importance as it would aid in closing the “revolving door” of persistent transgressors who repeatedly open LLCs and shut them down after fines have accumulated. Without these statutory changes and the implementation of other recommendations by Task Force, the revolving door will remain open.

RECOMMENDATIONS

Worker misclassification is a nationwide problem, which is why each state's approach to solving it may be different based on methods best-suited for that state. The Task Force created three working groups that heard from subject matter experts and stakeholders regarding the efforts of other states to combat worker misclassification and payroll fraud.

Upstream Liability Working Group

The Upstream Liability working group's goal was to make sure all the stakeholders (e.g., contractors, general contractors, construction managers, and developers) are educated on the importance of properly classifying workers and are held accountable when workers are being misclassified. One option discussed by the group was creating a mechanism to serve as a financial incentive for contractors to ensure their subcontractors are properly classifying employees, and providing those employees with access to unemployment insurance, worker's compensation insurance, and the appropriate employment rights and labor standards.

Over the year, the Upstream Liability working group met four times and examined various approaches to upstream liability from different states. Representative Christine Sinicki, and members of her staff, Kylie Coffin and Mary Beth George, presented research regarding efforts in other states to address general and other upstream contractor liability for lower tier subcontractor failure to comply with legal requirements including worker classification, worker's compensation, unemployment insurance, and wage and hour violations. The group discussed the issue, recognizing how difficult it is to have this discussion without the statutory changes that were previously recommended but not yet enacted, such as contractor registration and increased penalties for noncompliance. The consensus of the group is that there needed to be a broader representation of various levels of contractor stakeholders involved in the Upstream Liability working group. The group decided that Task Force members would recruit and encourage other stakeholders to attend the meetings where the issue and possible solutions would be discussed.

At the Upstream Liability working group's October meeting, the group revisited its recruitment efforts. Mark Reihl, the chair of the work group, reached out to additional stakeholders, who initially accepted the invitation, but later declined due to competing legislative priorities. Members of the group acknowledged that having input from additional stakeholders would improve the likelihood of their recommendations moving forward in the legislature. After discussing upstream liability issues at various levels, such as the general contractor and sub-contractor levels, the group began to formulate its recommendation to the Task Force. During this discussion, the group also acknowledged that the enforcement authority of different entities affects the upstream liability issue. Based upon this research and extensive discussion among subject matter experts and stakeholders, the group determined it was not feasible to move forward with full upstream liability at this time. However, the group did make one recommendation to the task force. See Recommendation #1.

Department of Financial Institutions Registration Working Group

The Department of Financial Institutions (DFI) Registration working group's goal was to determine the information entities should have to disclose to DFI and if entities should have to register with or be authorized by DFI. The group met four times in 2021. At the group's October meeting, Chair Cindy Buchko presented examples of other states' DFI Registration processes.

Two specific examples were from Illinois and Iowa, where disclosure of at least one member or manager for foreign LLCs is required and managers/members of LLC's are disclosed publicly online. After discussing Chair Buchko's presentation, the group determined its recommendation to the task force would include disclosures, provisions and penalties, and enforcement authority. Based upon this research and extensive discussion among subject matter experts and stakeholders, the group made three recommendations to the Task Force. See Recommendations #2, #3, and #4.

Independent Contractor Test Working Group

The Independent Contractor Test working group's goal was to create a unified test to determine a worker's independent contractor status. The group met five times in 2021. The group first met in July 2021 to discuss a planning process. Group members determined that before they could develop a unified test, they needed to decide whether a unified test was feasible and advisable.

At the group's August and September meetings, the group reviewed and discussed information about independent contractor tests used in other states with a focus on whether states used a unified test. At the September meeting, the Department of Revenue and the Department of Workforce Development's Worker's Compensation, Equal Rights, and Unemployment Insurance Divisions also presented information about the independent contractor tests currently used to explore whether the tests could be aligned.

To further pursue topics discussed at the September meeting, a team presented in-depth information about Michigan's worker classification test. Jennifer Dambach of the Department of Revenue provided a comparative analysis of existing independent contractor tests used by Wisconsin agencies at the group's October meeting.

Based on the group's research and discussion, members concluded it is not feasible to move forward with a single independent contractor test at this time. However, the group did make one recommendation to the Task Force. See Recommendation #5.

The Task Force adopted all work group recommendations with unanimous votes.

The Task Force makes the following recommendations:

1. **Create a statutory Insurance Fraud Bureau of Investigations, targeting not only claim fraud but also premium and application fraud, with adequate resources to investigate and prosecute fraud. The bureau would be accountable for reporting its activities with other relevant agencies, the legislature, and the governor.**

   Explanation:

   This recommendation aims to disincentivize businesses and organizations from intentionally misclassifying workers and committing payroll fraud. Publicizing the names of entities that violate worker classification laws will spread awareness of enforcement of existing laws.

2. **Amend Wis. Stat. ch. 183 to require the disclosure of all members and managers of domestic and foreign Limited Liability Companies (LLCs) at organization or registration and in annual reports.**

   Explanation:

   Under current Wisconsin law, disclosure of the person organizing an LLC (who may or may not have any membership interest or current management authority, e.g., an attorney) and a registered agent is all that is required at organization or registration and in annual reports. As such, current law leaves agencies, in addition to municipalities and the public, with little to no information as to who owns or operates the LLC. Agencies with enforcement authority over payroll fraud have shared with the Task Force and its work groups over the last two years that this insubstantial requirement makes it difficult for them to investigate payroll fraud and worker misclassification by LLCs.

   Disclosure of members and managers will give agencies a starting point for identifying the individuals truly responsible for the operation of an LLC and give municipalities and the public basic information about who is responsible for the LLC. This will allow agencies to investigate potential payroll fraud and misclassification more effectively and will also help municipalities and the public better avoid those bent on payroll fraud.

   Furthermore, 25 states currently require public disclosure of member(s)/manager(s), including Arizona, Arkansas, Illinois, Indiana, Montana, and Nebraska, even though such disclosure is not contained within the Model LLC Act. The fiscal impact of the change is expected to be minimal, requiring simple modifications to existing paper and online forms.

3. **Amend Wis. Stat. ch. 183 to include a false filings provision and penalty.**

   Explanation:

   Pursuant to Wis. Stat. § 178.0120 (4) (partnerships), § 180.0129 (corporations), § 181.0129 (nonstock corporations), and § 185.825 (cooperatives), a person may not sign a document with intent that it be delivered to DFI or deliver, or cause to be delivered, a document if the person knows that the document is false in any material respect at the time of its delivery. Violation of this provision is a Class I felony, and DFI may refer potential violations to the Attorney General for enforcement.

   However, the false filings prohibition does not appear in the LLC statutes. Amending Wis. Stat. ch. 183 to include the false filings prohibition would provide DFI and the Attorney General with the same tools at their disposal to combat false filings by other entities. Should the Task Force's second recommendation be adopted, this change will allow DFI and the Attorney General to enforce the requirement that all members and managers of domestic and foreign LLCs be disclosed at organization or registration and in annual reports.

4. **Amend Wis. Stat. ch. 183 to provide for limited enforcement authority by DFI to investigate and refer violations to the Attorney General to enjoin LLC.**

Explanation:

As indicated in the previous recommendation, DFI has administrative authority only over LLCs, as well as other entity types. Evidence suggests that voluntary compliance by entities, particularly LLCs given that 90% of all business entities in Wisconsin are LLCs, is not happening. Such evidence includes:

- reports from agencies that LLCs are created and dissolved with regularity by the same actors with fairly clear intent to avoid liability for misclassification and payroll fraud;
- data from DFI indicating that very few penalties are ever assessed as a result of voluntary compliance; and
- a publicly available database that currently has over 2,200 entities that are either foreign entities not registered to do business in Wisconsin or domestic entities that are administratively dissolved but still operating in Wisconsin, see responsiblewisconsin.com

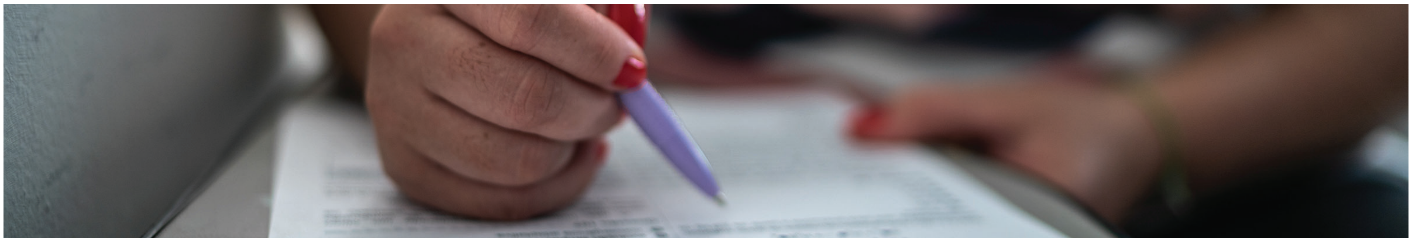
Nearly a dozen states allow referral of violations to the Attorney General. The Model LLC Act also allows actions by the Attorney General to enjoin a business entity from doing business in the state when it is in violation of the statutory requirements. In order for DFI to refer matters to the Attorney General, it should be granted limited enforcement authority to take complaints/ referrals, investigate compliance violations, proactively reach out to, and assess existing statutory penalties against, entities in violation, and refer violations to the Attorney General.

While such enforcement authority may require additional staff, the collection of penalties will offset at least some of the costs. For example, the Department of Workforce Development Unemployment Insurance Division is cost positive in its enforcement efforts. It may also be possible for DFI to work cooperatively with other agencies such as the Department of Revenue to streamline enforcement efforts and maximize staff and agency resources to the greatest extent possible.

5. **Direct the Department of Revenue and Department of Workforce Development to create and adopt a unified worker classification questionnaire.**

Explanation:

A unified worker classification questionnaire will help reduce worker misclassification by providing a single questionnaire for employees and employers to reference. Although the unified questionnaire is not a unified worker classification test, it aims to reduce confusion about Wisconsin's different worker classification laws and standards for tax, unemployment insurance, worker's compensation, and wage and hour purposes. The unified questionnaire will also allow agencies to address and investigate worker misclassification more effectively and efficiently.



CONCLUSION

Over the past year, the Task Force continued its investigation of policies and practices that are successfully reducing worker misclassification and payroll fraud. The recommendations presented in this report, in conjunction with the outstanding recommendations shared in its 2019-2020 and 2020-2021 reports, are the items the Task Force members agree should be the primary focus for addressing those key issues.

The Task Force looks forward to working with the Governor's Office, the Legislature, state agencies, the Unemployment Insurance Advisory Council, the Worker's Compensation Advisory Council, and other interested stakeholders to implement these recommendations to combat worker misclassification in Wisconsin.

Outstanding Recommendations from 2019-2020 and 2020-2021 Reports

- Create an enhanced Contractor Registration Program that requires all individuals representing themselves as contractors in Wisconsin to register with the Department of Safety and Professional Services (DSPS) before performing services. (2020 Recommendation 1)
- Increase the capacity of the Department of Workforce Development to investigate and enforce the laws regarding worker classification. (2020 Recommendation 3)
- Develop Penalty Structure for Worker Classification Violations that Deter Repeat Violations. (2020 Recommendation 4)
- Amend Wis. Stat. § 102.125 to clarify that application and premium fraud is covered. Amend the criminal code, Wis. Stat. Chapter 943 to specifically include premium fraud as part of the insurance fraud definition (2021 Recommendation 1)
- Amend Wis. Stat. § 102.125 to create a statutory requirement for insurers and self-insured employers to report worker's compensation premium and application fraud to the Department of Workforce Development. Encourage the Task Force to explore mandatory reporting of all insurance fraud and collaboration with NICB. (2021 Recommendation 2)
- Create a statutory Insurance Fraud Bureau of Investigations, targeting not only claim fraud but also premium and application fraud, with adequate resources to investigate and prosecute fraud. The bureau would be accountable for reporting its activities with other relevant agencies, the legislature, and the governor. (2021 Recommendation 3)
- Engage relevant stakeholders to develop a statutory requirement of upstream liability, including upstream liability for wage theft, modeled after similar laws in other states. Explicitly address joint liability that is sometimes used by DWD's Equal Rights Division (ERD) in wage claim cases. (2021 Recommendation 6)
- Create a law that requires ERD to investigate and adjudicate misclassification within the concept of labor standards. Do it in a way that still allows the Unemployment Insurance Division to enforce their laws, avoid confusion due to inconsistency in the law, and maximize investigatory and enforcement resources. Create a requirement in the law to require ERD to publish an annual report that includes all findings of misclassification by employer name and amount, modeled after Pennsylvania Construction Workplace Misclassification Act. (2021 Recommendation 7)

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