

Joint Enforcement Task Force on Payroll Fraud and Worker Misclassification

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Tony Evers, Governor

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This presentation is an informal explanation and is not a guidance document as defined in sec. 227.01(3m)(a), Wis. Stats.



Objectives

- Department of Revenue Mission
- Wisconsin Statutes
- Employee vs Independent Contractor
- What is DOR doing?



DOR Mission

- Administer Wisconsin's tax system to provide revenue to fund state and local government services.



General Statutes

- [Sec. 71.63\(2\)](#), Wis. Stats.
- "Employee" means a resident individual who performs or performed services for an employer anywhere or a nonresident individual who performs or performed such services within this state...



General Statutes

- [Sec. 71.63\(3\)](#), Wis. Stats.
- “Employer” means a person, partnership or limited liability company, whether subject to or exempt from taxation under this chapter, for whom an individual performs or performed any service as an employee of that person, partnership or company ...



General Statutes

- [Sec. 71.63\(6\)](#), Wis. Stats.
- “Wages” means all remuneration..., for services performed by an employee for an employer...



Employment Related Taxes DOR Administers

- Individual Income Tax (IIT)
- Corporation Tax, both C-corp and S-corp
- Partnership Income (P-ship)
- Withholding

The top of the slide features a decorative blue banner with a white wavy border. In the background, the Wisconsin State Seal is visible, showing a figure holding a rifle and a plow, with the text "WISCONSIN" and "1848" around it.

Employer Reports to DOR

- Wisconsin income tax withheld from employee wages
- Annual report of income tax withheld
 - # of employee W-2s
 - # of 1099s with Wisconsin income tax withheld



Employer & Payer Report to DOR

- Information returns
 - W-2s
 - 1099s reporting WI withholding
 - 1099s reporting rents and royalties (\$600 or more)
 - 1099s reporting certain nonwage payments (\$600 or more)



Employee vs Independent Contractor

Employee

- Issued W-2 by employer
- Employer withholds, unless exempt from withholding or exemption claimed
- Employer claims expenses on its income/franchise tax return
- May have federal misc. itemized deduction for unreimbursed employee expenses (pre-2018)

Independent Contractor

- May be issued 1099-Misc by entity
- Makes estimated payments for income tax
- Reports income on Sch C or as "other income"
- Claims expenses to offset Sch C income



How Determination Made

- Wisconsin follows federal
- [Publication 1779](#) IC or Emp. Brochure: 3 areas of consideration:
 - Behavioral Control
 - Financial Control
 - Relationship of the Parties
- [Publication 15-A](#) **Employer's Supplemental Tax Guide**



Misclassification Impact on Employer

- [Sec. 71.74\(4\)](#), Wis. Stats. Disallowance of wage deduction
- [Sec. 71.82\(2\)\(d\)](#), Wis. Stats. 18% delinquent interest on amounts required to be withheld but not deposited or paid over to the department as required



Employer Impact

Penalties

- [Sec. 71.83\(1\)\(a\)1m](#), Wis. Stats. Failure to file information return, \$10 per violation
- [Sec. 71.83\(1\)\(b\)3](#), Wis. Stats. Failure to file wage statement, \$20 for each failure
- [Sec. 71.83\(1\)\(a\)2](#), Wis. Stats. Incomplete or incorrect return, 25% of the amount otherwise payable
- [Sec. 71.65\(6\)](#), Wis. Stats. Construction contractors-employer willfully misclassifies employee as nonemployee, \$25,000 per violation



Misclassification Impact on Mission

- Unreported income by unidentified workers leading to lost income and franchise tax revenue
- Potential that entities and/or workers are operating in Wisconsin and not filing required tax returns
- Difficulty in locating out-of-state workers



What is DOR doing?

- Nexus Section:
 - Review information and documents to determine if an entity has "nexus" requiring the filing of WI income/franchise and/or sales/use tax returns
 - Voluntary disclosure



Nexus

Vendor Law:

- Sec. [77.66](#), Wis. Stats.
- Certification for collection of sales and use tax

Nexus Results

Year	# of cases completed	\$ collected
June FY17	1512	\$30,270,278
June FY18	1965	\$46,760,113
June FY19	2036	\$64,363,195

Nexus Impact

- Creates a level playing field for WI businesses by ensuring out-of-state businesses file returns and pay taxes to WI
- Of the cases closed, about 33% result in returns being filed
- Once a business is brought into compliance,
 - It continues to file for future years
 - Related entities start to file



DOR Actions

- Comparisons of W-2s and 1099s submitted to the wages, salaries, and labor on the issuer's tax income/franchise tax return (entity level comparison)
- Processing comparison of 1099s and W-2s from employer/payer against the IIT return filed by the taxpayer
- Annual non-filer project to identify and contact entities and individuals who are not filing WI returns
- [Publication 166](#) Withholding Tax Guide



DOR Actions

- Audit and Case activities:
 - Non-filer review by Nexus and/or Audit, including requests to file
 - Filers reviewed by Audit
 - Individual workers referred to IIT for review

