

Street Address

201 E. Washington Ave., Rm. A100
Madison, WI 53703
Telephone: (608) 266-6860
Fax: (608) 267-4592

Mailing Address

PO Box 8928
Madison, WI 53708

JOINT ENFORCEMENT TASK FORCE ON MISCLASSIFICATION AND PAYROLL FRAUD

Wednesday, January 29, 2020

9:00 am – 1:30 pm

Risser Justice Center

120 Martin Luther King Jr. Blvd.

Room 150A

Madison, Wisconsin

Equal Rights Division Response to Requests for Information

1. Information Requests

A. What is the break down by industry of noncompliance?

The Equal Rights Division does not keep specific data, but we identified common industries where we find misclassification issues, as reported by investigators:

- Construction industry
- Trucking
- Entertainers (and sometimes they are independent)
- Exotic dancers
- Small businesses
- Seasonal businesses
- Home health industry
- Cleaning companies
- Gyms / Personal trainers

B. Is there a difference in compliance between large and small employers?

ERD does not collect this data, but our impression is that misclassification is more common among small employers.

C. Is there a way to identify the repeat offenders – by person/company other?

Our Equal Rights Officers are assigned to territories, so they may generally remember repeat cases, but ERD does not have a process or system in place that offers any automatic ticklers or flags that identify repeat offenders. In some cases, where an ERO finds an issue likely to affect more people than just the complainant, we issue a "self-audit order" to determine whether there are additional violations and pay employees who are similarly impacted. If employers do not conduct the self-audit and we later find violations, we impose additional penalties.

D. Can we quantify the level or percentage of misclassification?

No – we can only count complaints filed and violations found, and misclassification is not a violation in and of itself, so it is difficult to gather even that data.

2. Data Sharing

A. What MOUs or other data sharing agreements currently exist?

We have an MOU with the United States Department of Labor (USDOL) related to case referrals, but not ongoing data reporting. We have data sharing agreements with the U.S. Equal Employment Opportunity Commission (EEOC) and Madison Equal Opportunities Division (MEOD) related to civil rights enforcement, not labor standards.

B. What other data sharing occurs with other agencies or companies?

None other than what is listed above in 2A.

C. What laws, rules, or policies prohibit or impeded data sharing with other governmental agencies, including counties and municipalities?

None

D. What laws, rules, or policies prohibit or impeded data sharing with private companies

None

3. Input from practitioners

A. What tools do you currently have that seem to be effective? How do you know they are effective (data)?

We conduct and resolve investigations when we receive a complaint, but we do not otherwise audit or pursue enforcement.

B. What tools or strategy would you recommend in order to be more effective?

The ERD addresses misclassification only insofar as it underlies other labor standards issues, such as minimum wage violations or wage theft. If the ERD is to be more impactful at combatting misclassification, we should probably have a process in place for alerting other divisions (UI) when misclassification is found or is likely. There may also be more for us to do in aggressively pursuing retaliation against misclassification whistleblowers, but this would need to be examined more closely.

C. Do you have the data you need? If not, what do you need and who has it?

Under current enforcement processes, unsure what additional data would be helpful.

D. What barriers do you face and is there a way to break those barriers?

Increased education and outreach, particularly targeted to those industries where misclassification appears more common, would help.

E. What education do you do (aside from the enforcement letters already discussed)?

We conduct labor law clinics and outreach, but it is not targeted and generally not focused on misclassification as a topic.

F. Do the penalties currently available seem to have an effect?

Unsure. The scope of our work is to remedy specific labor standards complaints. We are not currently investigating or pursuing misclassification outside of those processes.