

Draft Recommendations to the Task Force as approved:

- Require DOJ and DWD to review Wis. Stat. 108.24 (2) and (2m) to determine whether the statute should be amended to better enable worker misclassification prosecutions.
- Create a statutory requirement of upstream liability modeled after CA law, effective 2018, including upstream liability for wage theft. Explicitly address joint liability that is sometimes used by ERD in wage claim cases.

MD, NJ, DC, CA, NV, and VA are state that do this in some form already.

Excerpt of California Law: "218.7. (a) (1) For contracts entered into on or after January 1, 2018, a direct contractor making or taking a contract in the state for the erection, construction, alteration, or repair of a building, structure, or other private work, shall assume, and is liable for, any debt owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner."

Link to [California law](#)

- 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 UI 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 to ERD publish an annual report that includes all findings of misclassification by employer name and amount. Modeled after [Pennsylvania Construction Workplace Misclassification Act](#).

Wis. Stats. Sec. 108.24 (2) and (2m)

- (2) Except as provided in sub. (2m) and s. [108.16 \(8\) \(m\)](#), any person who knowingly makes a false statement or representation in connection with any report or as to any information duly required by the department under this chapter, or who knowingly refuses or fails to keep any records or to furnish any reports or information duly required by the department under this chapter, shall be fined not less than \$100 nor more than \$500, or imprisoned not more than 90 days or both; and each such false statement or representation and every day of such refusal or failure constitutes a separate offense.
- (2m)** Any employer described in s. [108.18 \(2\) \(c\)](#) or engaged in the painting or drywall finishing of buildings or other structures who, after having previously been assessed an administrative penalty by the department under s. [108.221 \(1\)](#), knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may refer violations of this subsection for prosecution by the department of justice or the district attorney for the county in which the violation occurred.