

WISCONSIN



DWD

Worker Classification

UNEMPLOYMENT INSURANCE

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Wisconsin 's Unemployment Insurance Program

- Unemployment Insurance (UI) is financed by federal and state taxes paid by employers who are subject to federal and state UI laws.
- The UI program primary roles are to provide:
 - Temporary economic assistance to individuals who are out of work through no fault of their own while they look for employment.
 - Economic stability in the state during periods of economic downturn.
- WI was the first state to enact UI legislation in 1932 to help stabilize the effects of the Great Depression.



UI & Worker Misclassification

- **Worker misclassification negatively impacts the UI program through:**
- **The loss of UI tax revenue** from employers who misclassify workers;
- **The creation of an unfair business climate** that places those who follow the law at a competitive disadvantage; and
- **Denying workers access to the UI benefits** they may have been eligible for if properly classified.



Worker Misclassification Task Force (2009)

- **Established in 2008** by DWD Secretary and chaired by the UI Division Administrator.
- **Charged with** examining the problems relating to misclassifying workers and recommending administrative and legislative steps to address those problems.
- **Members included** individuals representing the interest of workers and business communities from industries impacted by misclassification.
- Also included personnel from **DWD, DOR, and Wisconsin Department of Commerce.**



Recommendations of the Task Force

- **Recommendation 1:** Create an Office of Worker Misclassification; empower the Office to issue stop work orders.
- **Recommendation 2:** Increase information sharing among state agencies.
- **Recommendation 3:** Support the operations of the Department of Commerce Builder Contractor Registration (BCR) program.
- **Recommendation 4:** Establish a "hotline" to facilitate reports from workers, contractors, and the general public about misclassification abuses.



Recommendations of the Task Force

- **Recommendation 5:** Undertake an aggressive campaign to educate contractors and the general public about misclassification issues.
- **Recommendation 6:** Withhold 2% on form 1099 from payments made by contractors to subcontractors, including individuals operating as independent contractors.
- **Recommendation 7:** Provide significant penalties for contractors actively seeking to subvert and avoid proper classification of workers.
- **Recommendation 8:** Conduct additional study of other policy options designed to combat worker misclassification.



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 1: Create an Office of Worker Misclassification; empower the Office to issue stop work orders.

- **DWD drafted legislation** with input from stakeholders impacted by worker misclassification.
- **2009 Wis. Act 292** became effective January 1, 2011 and required DWD to:
 - **Educate employers, employees, nonemployees, and the public about the proper classification of employees and nonemployees.**
 - **Receive and investigate complaints alleging misclassified workers or investigate any alleged violations on its own initiative and referring these complaints to other appropriate agencies.**



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 1: Create an Office of Worker Misclassification; empower the Office to issue stop work orders.

- **2009 Wis. Act 292** further authorized DWD to:
 - **Cooperate with other state or local agencies in the investigation and enforcement of laws whose enforcement depends on the proper classification of employees.**
 - **Issue a “stop work” order at the work site if an employer fails to demonstrate compliance with any requirements.**
 - **An employer that does not comply with a stop work order may be assessed a forfeiture of \$250 per day until the employer either stops work or complied with the requirements.**



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 1: Create an Office of Worker Misclassification; empower the Office to issue stop work orders.

- **Initial efforts by UI Division:**
 - **One BOLA staff hired in May 2010**
 - **Investigative policy was created**
 - **Website was created to inform employers on how to properly classify workers as employees or independent contractors**



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 1: Create an Office of Worker Misclassification; empower the Office to issue stop work orders.

- **Creation of the Worker Classification Section**
 - DWD initially financed the worker misclassification initiative almost exclusively through federal grants.
 - In 2018, a formal Worker Classification Section was officially created in BOLA.
 - Team consists of seasoned investigators with extensive experience in white collar and economic crime investigations.



DWD UI's Efforts in Response to 2009 Task Force Recommendations

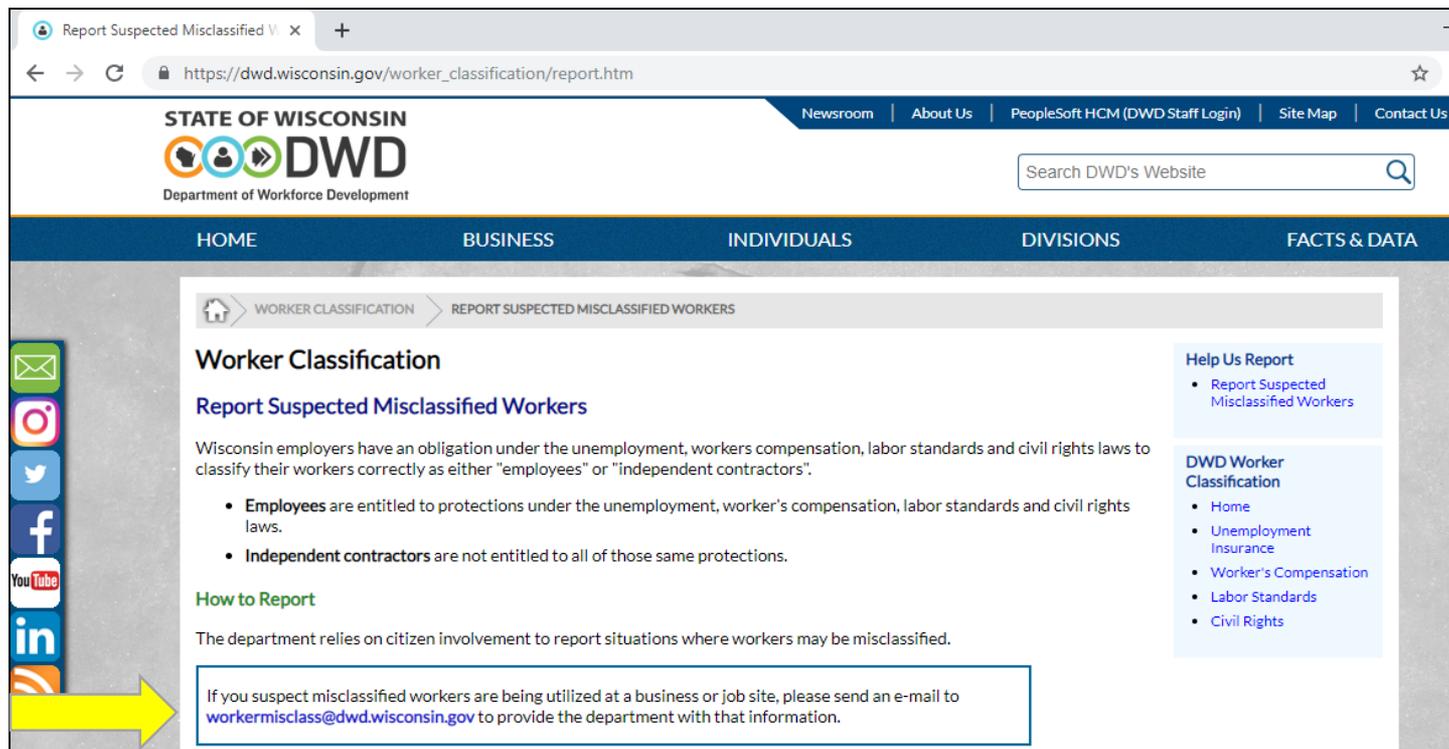
Recommendation 2: Increase information sharing among state agencies.

- Referrals from other Divisions within DWD (e.g., Workers Compensation and Equal Rights)
- Referrals with other WI state agencies (DOR, DOJ, law enforcement, etc.)
- In 2014, DWD signed MOU with USDOL to share information and coordinate law enforcement efforts to reduce employee misclassification
- Collaboration with OSHA on referrals and joint investigative operations with OSHA inspectors



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 4: Establish a "hotline" to facilitate reports from workers, contractors, and the general public about misclassification abuses.



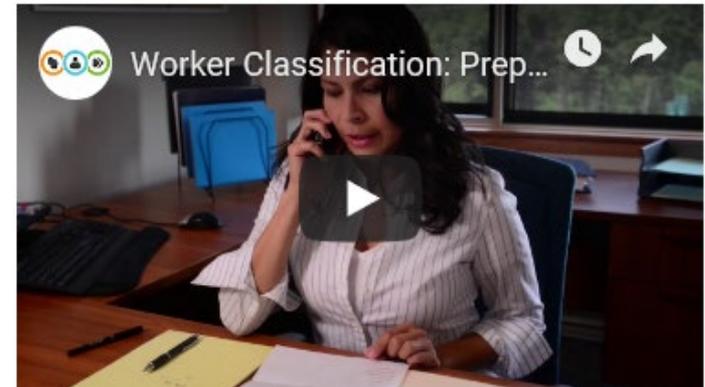
DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 5: Undertake an aggressive campaign to educate contractors and the general public about misclassification issues.

- **DWD launched a first-of-its-kind worker classification website in 2013:**
<https://dwd.wisconsin.gov/worker-classification/>
- **Two informational videos were added to the website in 2016**



Proper Worker Classification



Worker Classification: Preparing for a Tax Appeal

DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 5: Undertake an aggressive campaign to educate contractors and the general public about misclassification issues.

- **UI supplements the educational value of the website through education & outreach efforts such as:**
 - Providing speakers to employers and trade unions;
 - Presenting at construction industry events, labor union meetings and other public forums;
 - Holding meetings with individual contractors;
 - Forums such as Labor Law Clinics and Friday Fundamental webinars;
 - Radio Public Service Announcements; and
 - Annual Rate Notice Newsletter.



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 7: Provide significant penalties for contractors actively seeking to subvert and avoid proper classification of workers.

- **2009 Wis. Act 28 (2009-2011 state budget):** provided that any employer engaged in construction projects who willfully misclassified a worker as an independent contractor with intent to evade any requirement of workers compensation, fair employment or UI law would be subject to **a fine of \$25,000 for each violation.**
 - The provision relating to penalties for willful misclassification was later **amended by 2009 Wis. Act 288** to include employers engaged in painting or drywall finishing of buildings/other structures.



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 7: Provide significant penalties for contractors actively seeking to subvert and avoid proper classification of workers.

- **2015 UIAC agreed bill (2015 Wis. Act 334)** contained numerous law changes for intentional misclassification penalties. Effective Oct. 2016:
 - Any construction employer who knowingly and intentionally misclassifies workers is subject to a **civil penalty of \$500 per employee** intentionally misclassified with a maximum penalty of **\$7,500 per employer per incident**.
 - A new administrative penalty was created for construction employers who coerce individuals to adopt independent contractor status.
 - **The penalty is \$1,000 per employee coerced with a maximum penalty of \$10,000 per employer per year**



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 7: Provide significant penalties for contractors actively seeking to subvert and avoid proper classification of workers.

- **2015 UIAC agreed bill (2015 Wis. Act 334)** contained numerous law changes for intentional misclassification penalties. Effective Oct. 2016:
 - A construction employer who knowingly and intentionally provides false information in order to misclassify workers, **after having been assessed an administrative penalty**, is subject to a **criminal fine of \$1,000 per misclassified worker up to \$25,000** for each violation.
 - Criminal penalties for intentional worker misclassification are prosecuted by the DOJ or local district attorneys.



DWD UI's Efforts in Response to 2009 Task Force Recommendations

Recommendation 8: Conduct additional study of other policy options designed to combat worker misclassification.

- **2007 UIAC agreed bill (2007 Wis. Act 59)** required that the UIAC appoint a committee to study the definition of "employee" under UI law.
- UIAC approved the study committee's recommendations and included the proposed changes in the **2009 UIAC agreed bill (2009 Wis. Act 287)**.
 - 2009 Wis. Act 287 changed the test for determining employee status under UI law.
 - A worker must meet the criteria of **a two-part test to be considered an independent contractor for UI purposes under Wis. Stat. § 108.02(12)(bm)**.
 1. The worker must perform services free from direction or control of the employing unit, and
 2. Be engaged in an independently established trade, business or profession (meets 6 of 9 conditions).

The Report of the Study Committee to Review the Unemployment Insurance Statutory Definition of "Employee" can be found at the link below:

<https://dwd.wisconsin.gov/uibola/uiac/reports/2009eedefinition.pdf>



DWD UI's Efforts in Response to 2009 Task Force Recommendations

- **Ongoing efforts of the Worker Classification Section:**
 - The UIAC receives regular reports on the activities of the Worker Classification Section
 - The UI Division works with the UIAC to examine best practices utilized by other UI programs
 - Continued efforts to educate employers on proper worker classification
 - **Achieved success bringing select Wisconsin industries into compliance**



Questions?

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