

One Minute Memo[®]



New York State Creates Task Force to Crack Down on Employee Misclassification

On September 7, 2007, New York Governor Eliot Spitzer issued Executive Order No. 17, which establishes a statewide Task Force to systematically investigate cases in which employers have misclassified employees as independent contractors and to refer such cases for prosecution where appropriate. The Task Force's creation reflects a new, heightened emphasis in New York on enforcing federal and state labor, employment and tax laws, which Governor Spitzer has described as "a key component of my economic security agenda."

In its preamble, the Executive Order suggests that employers may deliberately "engage in employee misclassification in an attempt to avoid [their] legal obligations" under applicable law, and notes that a study of recent employment audits "found that up to 10% of the employees covered by [those] audits may have been misclassified."¹ Further, the Executive Order posits that such misclassification has a "significant adverse impact" on New York's economy, and suggests that enforcement historically has been hampered by the fact that various state agencies with oversight responsibilities have not coordinated their efforts.

To that end, the Joint Enforcement Task Force on Employee Misclassification is charged with assessing and improving the state's enforcement efforts in this area, and specifically with "develop[ing] strategies for systematically investigating employee misclassification within those industries in which misclassification is most common." To foster cross-agency cooperation, the Task Force will be chaired by the State Commissioner of Labor and include the State Attorney General, the Commissioner of Taxation and Finance, the Chairman of the State Workers' Compensation Board, the Workers' Compensation Inspector General and the New York City Comptroller. The makeup of the Task Force is intended to ensure that where any one of these agencies learns of a potential violation, that agency will promptly forward the relevant information to other agencies so that a joint investigation can begin. In addition, the Task Force is specifically obligated both to facilitate the filing of complaints and to work with local district attorneys and other agencies to facilitate prosecution of employers where appropriate.

¹ Executive Order No. 17 is available online at <<http://www.ny.gov/governor/press/ExecutiveOrderNo17.pdf>>.

The Executive Order also contemplates that the Task Force will work with representatives of business and labor groups interested in proactively reducing employee misclassification through education and other non-enforcement efforts. However, comments by Governor Spitzer and others make clear that the Task Force's primary focus will be identifying, investigating and prosecuting possible violations by employers, and that education and outreach are secondary goals at best. In the words of Labor Commissioner Patricia Smith, who will be chairing the Task Force: "This Executive Order is another powerful and unprecedented tool for protecting the basic rights of all of the state's workers. The Joint Enforcement Task Force is assembled and ready to reverse several years of lax enforcement."²

New York State has declared its intention to tighten the rules regarding independent contractors, and to do what it can to encourage worker complaints and increase prosecutions. In the wake of this announcement, New York employers are well-advised to review their existing employee classifications and ensure that they are not mischaracterizing individuals as independent contractors rather than employees. Should you require any assistance in this area, or have questions regarding any other workplace issue, please contact your Seyfarth Shaw attorney or any Labor & Employment attorney on our website, www.seyfarth.com.

² Commissioner Smith is quoted in Governor Spitzer's press release regarding Executive Order No. 17, which is available online at <http://www.ny.gov/governor/press/0907071.html>.

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