



KEVIN J. O'CONNOR, ESQ.



JOSEPH M. VENTO, ESQ.

For More Information Please Contact

Kevin J. O'Connor
koconnor@pecklaw.com
201.343.3434

Joseph M. Vento
jvento@pecklaw.com
201.343.3434

New Jersey's New Governor Puts Construction Firms On Formal Notice Of His Focus On Misclassification Of Workers As Independent Contractors

We have written quite a bit about the mounting threat to employers, both nationally and locally, of claims of misclassification of workers as independent contractors rather than employees. New Jersey's new Gov. Phil Murphy signed an executive order last week that establishes a task force on employee misclassification to punish contractors who commit fraud by classifying their employees as independent contractors.

In the words of Governor Murphy: "I am signing this order to crack down on unscrupulous contractors who commit 1099 fraud to exploit workers and rob them of family and medical leave and safe workplace protections that the law provides," Murphy said. "The employer gives themselves an unfair business advantage and this practice is illegal. This is a question of enforcing what is already on the books." He has vowed that any employer caught misclassifying workers will either be brought into compliance or put out of business. The task force will foster compliance with the law and conduct a comprehensive review of existing practices.

New Jersey adopted several statutes back in 2007 to provide rights to workers in the construction industry who are misclassified. For instance, N.J.S.A. § 34:20-8 provides that "[n]o employer shall require or request that any individual enter into an agreement or sign a document which results in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the employment relationship with the employer." The act further provides that a misclassified construction worker

"may bring a civil action for damages against the employer or any other employer who was in contract with the employee, for failing to properly classify the employee if the employer had knowledge of the misclassification... The court may award attorneys fees and other costs of the action in addition to damages to an individual or class of individuals who have not been properly classified as employees...."

To some degree, employers in New Jersey have been shielded from the wave of activity occurring throughout the country, as States, in consultation with the federal government, have taken an active role in cracking down on misclassification of workers. As the number of IRS Form 1099s has skyrocketed in recent years, state and

federal budgets have taken a hit. At the federal level, the Obama administration implemented a widespread “Misclassification Initiative” that entailed close coordination between federal and state governments to share information to battle the issue. New Jersey was not one of the states that had signed on to cooperate with the federal initiative.

Contractors in New Jersey should take a close look at the way that their employees are paid and classified, and should also be aware of the risks when their subcontractors misclassify workers. Aside from the risk of misclassification, there is the added risk that an unpaid employee of a subcontractor will make a complaint to a state agency, or file a civil complaint, alleging that he or she was jointly employed by the general contractor and subcontractor. Now more than ever it is important to tighten up the contractual relationships with all subcontractors, and to closely audit how workers are classified and paid.

Using a baseball analogy, Governor Murphy said he wants to “put runs on the board early with the equivalent of a 98 mile per hour fastball under the chin.” The New Jersey Department of Labor Commissioner, Robert Asaro-Angelo, has declared a new “era of workers’ rights in New Jersey”. Now is to time to contact competent counsel with knowledge of these threats to audit your business to ensure compliance with these and other laws which are now being focused on by the state government like never before.

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