OFFICE OF
THE GOVERNOR

NO. 23 FY 08/09
DATE January 14, 2009

AN ORDER ESTABLISHING THE JOINT ENFORCEMENT TASK FORCE ON EMPLOYEE MISCLASSIFICATION

WHEREAS, the practice of employing individuals as "independent contractors" when legally they should be classified as "employees" (hereinafter referred to as "employee misclassification") is increasing nationally and in Maine; and

WHEREAS, employers sometimes engage in employee misclassification in an attempt to avoid the employers' legal obligations under the federal and state labor, employment and tax laws, including laws governing minimum wage, overtime, prevailing wage, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment, child support and income tax; and

WHEREAS, employee misclassification has a significant adverse impact on the residents, businesses and economy in Maine, because this practice reduces compliance with employment and safety standards depriving vulnerable workers of important protections and benefits to which they are legally entitled; gives employers who misclassify their employees an improper competitive advantage over law-abiding businesses; increases the risk of avoidance of child support; deprives the State of substantial revenues; and imposes indirect costs on the State from decreased legitimate business activity and increased demand for social services; and

WHEREAS, a 2005 independent study based on audits of Maine unemployment records for construction employers between 1999 through 2002 found that one in seven or 14% of these employers misclassified employees as independent contractors; and

WHEREAS, a review of the unemployment audits performed by the Maine Department of Labor identified misclassification of employees as independent contractors occurring in 29% of employers audited in 2004 (all industry types), 39% in 2005, 43.0% in 2006 (mostly construction employers) and 41% in 2007; and

WHEREAS, law enforcement activities in this area historically have been divided among various agencies, reducing the efficiency, consistency and effectiveness of enforcement; and

WHEREAS, enforcement efforts to address the problem of employee misclassification can be enhanced and made more consistent and efficient through interagency cooperation, information sharing, and the prosecution of violators; and

WHEREAS, the creation of joint task forces has proven to be an effective mechanism for coordinating and enhancing labor law enforcement, including efforts by other States to address the problem of employee misclassification;

NOW, THEREFORE, I, John Elias Baldacci, Governor of the State of Maine, do hereby establish the Joint Enforcement Task Force on Employee Misclassification.

Purpose and Duties

The purpose and duties of the Joint Enforcement Task Force on Employee Misclassification shall be to coordinate the investigation and enforcement of employee misclassification matters by the members of the Task Force and other relevant agencies. In fulfilling this mission, the Task Force shall:

1. Facilitate the timely sharing of information relating to suspected employee misclassification violations between and among Task Force members to the maximum extent permitted by law;

2. Identify those industries and sectors where employee misclassification is most prevalent to help inform and focus Task Force members' investigative and enforcement resources;

3. Assess existing investigative, prevention and enforcement methods in Maine and develop and recommend strategies and measures to improve the effectiveness of these methods;

4. Facilitate the formation of joint enforcement teams where appropriate to leverage the collective investigative and enforcement capabilities of the Task Force members to combat employee misclassification;

5. Identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts;

6. Increase public awareness of the illegal nature of, and harms inflicted by, employee misclassification;

7. Work cooperatively with employers, labor and community groups to reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the legal differences between independent contractors and employees, and enhancing mechanisms for identifying and reporting potential employee misclassification; and

8. Meet with representatives of business, organized labor and community organizations, and members of the applicable legislative oversight committees to discuss the activities of the Task Force and ways to improve the effectiveness of its operation.

Membership

The Joint Enforcement Task Force on Employee Misclassification shall be chaired by the Commissioner (or designee) of the Department of Labor and shall include representatives of the following state agencies:

- The Department of Labor (including the Bureaus of Unemployment Compensation, Employment Services, Labor Standards & Center for Workforce Research & Information)

- Workers Compensation Board (including the Office of Monitoring, Audit and Enforcement)
- Office of the Attorney General
- Department of Administrative & Financial Services (including Maine Revenue Services)
- Professional & Financial Regulations (including the Bureau of Insurance)

Members of the Task Force shall serve without compensation.

Annual Report

The Task Force shall transmit an annual report to the Governor summarizing the Task Force's activities during the preceding year. The report shall:

1. Describe the Task Force's efforts and accomplishments during the year including the amounts of wages, premiums, taxes and other payments or penalties collected with the assistance of Task Force activities, as well as the number of employers identified as misclassifying workers and the approximate number of employees affected;

2. Identify any administrative or legal barriers impeding the more effective operation of the Task Force including any barriers to information sharing or joint action;

3. Recommend measures, including legislative or regulatory changes, to strengthen the Task Force's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and

4. Identify successful preventative mechanisms for reducing the extent of employee misclassification, thereby reducing the need for greater enforcement.

The Task Force shall also take appropriate steps to publicize its activities and findings.

Effective Date

The effective date of this Executive Order is January 14, 2009.

John E. Baldacci, Governor