

Pa. Focused on Independent Contractor Misclassification

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A Pennsylvania task force formed in 2020 to study the effects of misclassification of employees as independent contractors returned its annual report Tuesday, claiming nearly 400,000 employees in the state are not correctly classified.

According to the report, the financial result of employee misclassification is estimated at \$131 million in annual lost revenue to the unemployment compensation trust fund and between \$6.4 million and \$124.5 million in lost state revenue - totals high enough that state lawmakers likely will be looking for additional ways to crack down on employers that misclassify employees.

Typically, employees are subject to certain protections such as unemployment compensation and workers' compensation insurance, and are more likely to receive employer-provided health benefits. Both are costly for employers, which can motivate some employers to classify a worker as an independent contractor rather than an employee. The rise of today's gig economy and freelance work arrangements also blur the line between an employee and independent contractor.

The report issued 15 recommendations for state lawmakers, including items such as expanding current employee misclassification laws beyond the construction industry, enhancing penalties for employers who misclassify their employees, and giving the Pennsylvania Department of Labor & Industry additional authorities to tackle fraudulent employee classification. Additional recommendations include stop work orders and debarment, creating a private right of action for misclassified employees, and promoting information sharing among Pennsylvania agencies to coordinate enforcement efforts.

The recommendations also include an adoption of the more employee-friendly "ABC test" utilized in California and New Jersey to determine whether a worker is an employee or an independent contractor. President Joe Biden said in 2021 he favors the ABC test as well for more accurate worker classifications.

The report, and the formation of the task force itself, is a clear sign that Pennsylvania intends to keep a much closer eye on employers that misclassify their employees. Pennsylvania employers that continue to misclassify their independent contractors could risk higher levels of investigation and increased penalties. Attorney General Josh Shapiro, a member of the task force, has in the past pledged his support to employees who are misclassified. Shapiro also is a candidate for Pennsylvania governor this year.

We will continue to track the work of the task force as it wraps up in 2022, and the implementation of any of these recommendations. If you have questions about your business's classification of independent contractors, please [contact me](#) or anyone in the [Barley Snyder Employment Practice Group](#).

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