

Underground Economy and Employee Misclassification Task Force 2015 Annual Report



www.Misclassification.RI.gov

Rhode Island Stakeholders
Department of Labor and Training
Department of Business Regulation
Department of Public Safety
Workers' Compensation Court
Division of Taxation
Office of the Attorney General
Contractors' Registration and Licensing Board

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Director Scott R. Jensen

March 15, 2015

The Honorable Gina M. Raimondo
Governor
State of Rhode Island
State House
Providence, RI 02903

The Honorable Raymond E. Gallison Jr.
Chairman
RI House Committee on Finance
State House, Room 35
Providence, RI 02903

The Honorable Daniel DaPonte
Chairman
RI Senate Committee on Finance
State House, Room 211
Providence, RI 02903

Re: **Submittal of annual report summarizing the work of the Underground Economy and Employee Misclassification Task Force, 2014-2015**

Dear Governor Raimondo, Chairman Gallison, and Chairman DaPonte:

Passed and implemented in June 2014, Article 8 of the Fiscal Year 2015 Enacted Budget established the Underground Economy and Employee Misclassification Task Force.

This enabling statute instructed the Task Force to summarize its work in a report to be submitted to the Governor and respective Finance Committee Chairmen annually on March 15.

On behalf of the five state agencies and one Constitutional Officer that our group consists of — the Department of Labor and Training, Department of Business Regulation, Department of Public Safety, Workers' Compensation Court, Division of Taxation, and RI Office of the Attorney General — I am grateful for this chance to inform you of our work and accomplishments over the past nine months.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Scott R. Jensen', is written over a light blue circular stamp.

Scott R. Jensen
Director
RI Department of Labor and Training

Executive Summary

The Underground Economy and Misclassification Task Force’s dual purpose is to protect the health, safety, and benefit rights of Rhode Island workers and to restore competitive equality for law-abiding Rhode Island businesses.

Although often there is confusion about the meaning of “employee misclassification,” at its heart, this shady, costly, and illegal practice simply is another term for workplace fraud.

Legitimate independent contractors are a firmly established and important part of the US and RI economies. When unethical employers knowingly misclassify employees as independent contractors, however, it penalizes the workers, aboveboard businesses across Rhode Island, and the State Treasury and local governments, which rely on payroll and income taxes to fund essential services.

The workers are denied access to critical benefits and protections to which they are entitled. These include family and medical leave,

minimum wage pay, overtime compensation, personal protective equipment, Unemployment Insurance, and retirement benefits. At the same time, deliberate misclassification creates economic pressure by unfairly increasing the tax burden on the majority of employers, which play by the rules. And by underreporting their payroll, or paying workers off the books and not reporting any wages, companies that misclassify are skirting payroll and income taxes, thus hitting State and local coffers hard.¹

In the following report, we will update you on how we’re tackling these challenges.

The member agencies of the Task Force are sharing information, pooling resources, and reaching out to Rhode Island’s 32,000 employers to let them know that we’re here, why we’re here, and how we’re doing our work. **Mainly, we want businesses to know that we’re aiming to “educate, not violate.”**

That said, we’re also collaborating on high-impact enforcement actions, and partnering with other states as a way to learn best practices and enhance our enforcement efforts.

We will launch a major piece of our public education and outreach soon — an interactive website offering information and resources, including a “Report Misclassification” form and a self-administered testing tool to help workers and companies alike determine if workers are employees or independent contractors.

¹ *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, A Survey of Research, National Employment Law Project, August 2014.

The Work of the Underground Economy and Misclassification Task Force

June 2014 to March 2015

Article 8 of the Fiscal Year 2015 Budget, enacted in June 2014, established the RI Underground Economy and Employee Misclassification Task Force.

The enabling statute directed the Task Force to reduce the incidence of the illegal practice of employers misclassifying employees as independent contractors, foster voluntary compliance with existing laws by educating businesses and workers about employee misclassification and its harmful impacts, and conduct joint, targeted investigation and enforcement actions against violators.

The legislation envisioned that by working to accomplish these goals, the Task Force would:

1. Protect the health, safety, and benefit rights of Rhode Island workers;
2. Restore competitive equality for Rhode Island businesses that are playing by the rules; and
3. Help the State of Rhode Island and the Federal Govern-

ment collect more revenues and program insurance premiums to which they are legally entitled.

Although confusion often surrounds the term “employee misclassification,” at its heart, it simply is workplace fraud.

It occurs when a worker is not classified as an employee, but should be. Its two most common forms are when companies do not report their workers at all, but rather, pay them completely “off the books” or “under the table” in cash,¹ and when employers deliberately misclassify employees as independent contractors.

Legitimate independent contractors are a firmly established and important part of the economy. When employers knowingly misclassify employees as independent contractors, however, it penalizes the workers, aboveboard businesses across Rhode Island, and the State Treasury and local governments.

Workplace fraud is costly and pervasive.

A paper issued in August 2014 by the nonpartisan National Employment Law Project (NELP) that looked at agency audits in 25 states found that “10 to 30 percent of employers, or even more, misclassify their employees as ‘independent contractors,’ meaning that several million workers nationally may be misclassified.” Based on a 2009 Government Accountability Office report estimating that independent contractor misclassification cost the federal government \$2.72 billion in revenues in 2006, the NELP report said, “State and federal governments lose billions in revenues annually as a result.”²

Annually, employee misclassification probably costs Rhode Island tens of millions of dollars in uncollected income tax and uncollected premiums for Unemployment Insurance (UI), Temporary Disability Insurance (TDI), and Workers’ Compensation Insurance.³

¹ It is this practice to which the “underground economy” refers.

² *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, A Survey of Research, National Employment Law Project, August 2014.

³ *Findings and Recommendations of the Special Joint Commission to Study the Underground Economy and Employee Misclassification*, a report submitted to the RI General Assembly, June 2009. The report cited a statistical analysis, conducted by staff of the RI Workers’ Compensation Court, finding that even at a very conservative estimate of 1% employee misclassification, the State of Rhode Island stood to lose more than \$12 million in FY 2008. Furthermore, the report stated, “A weighted average of 10 states that have calculated their percentage of misclassified employees, including Massachusetts and Connecticut, further indicated that potentially, 6.1% of RI employees were misclassified in FY 2008. This would have cost RI more than \$49.5 million in uncollected income tax and UI, TDI, and Workers’ Comp premiums (in FY 2008). Although these figures are not based on empirical data, but rather reasonable and informed estimates, they nevertheless indicate the significant cost that employee misclassification represents to Rhode Island.”

Article 8 of the enacted FY 15 budget directed the following state officials to serve on the group:

- The Director of the Department of Labor and Training (DLT — the DLT Director is the Task Force Chairman by statute)
- Attorney General of the State of Rhode Island
- RI Tax Administrator / Director of the Division of Taxation
- Director of the Department of Business Regulation (DBR)
- Public Safety Commissioner / Superintendent of the RI State Police
- Chief Judge of the Workers' Compensation Court, and the
- Assistant Director of DLT's Workforce Regulation and Safety division.

Although the Task Force has existed for only nine months at the time of this report, our six member agencies and offices already have made much progress pooling resources, integrating efforts, and sharing information.

We would be remiss if we did not recognize former DLT Director Charlie Fogarty — now serving the state as Director of the Division of Elderly Affairs — for his leadership in getting the Task Force on solid footing from the start.

And it has been aligning and coordinating efforts, identifying administrative barriers that have impeded progress in the past, and preventing jurisdictional overlaps and communication gaps that we have focused on.

Summaries of Task Force Meetings

DLT presented an overview of Article 8 to members at the first meeting, in July 2014, outlining Task Force responsibilities. These include:

1. Fostering voluntary compliance with the law⁴ by educating businesses and employees;
2. Conducting joint, targeted investigations, and tightening up enforcement actions;
3. Identifying barriers inhibiting the collection of taxes and program premiums; and
4. Producing an annual report summarizing our efforts.

The Task Force agrees that increasing governmental outreach and public awareness — employer education — must be the highest priority.

DLT says that it will start by including an informational flyer in its quarterly UI tax mailing to more than 32,000 RI businesses and include content about workplace fraud in employee education seminars that it holds annually in October. The Division of Taxation promises to create a centralized information storage system and clearinghouse, to encourage data sharing.

At the **August 2014** meeting, the Task Force approves the flyer that DLT has designed for inclusion in

the DLT's 2014 Q3 tax mailing to RI employers, and agrees that it should:

- Establish an anonymous telephone tip line for allegations of misclassification, and
- Divide the workload to build a designated website to help with employer outreach efforts.

The Division of Taxation says that it will take the lead, and run and staff the telephone tip line at Taxation, at the **October 2014** meeting. Good discussion is had about how to build an effective investigative framework, and each Task Force member as well as the RI Contractors' Registration Board — an integral agency in rooting out fraudulent and rogue operators in the home contracting and improvements industry — discusses how it takes and follows up on consumer complaints.

As well, DLT Legal presents a memorandum of understanding (MOU) for data sharing that it has drafted.

In **November 2014**, the Task Force reviewed the progress of the Joint Investigations working group, which it had formed previously. The working group includes members from Taxation and two DLT divisions, Workers' Compensation and Workforce Regulation and Safety. It will meet every two weeks to continue streamlining investigative processes. The group also agrees to issue a joint press release

⁴RIGL 28-14-19.1, Labor and Labor Relations, Payment of Wages. Enacted in 2012, this statute establishes the misclassification of employees as a civil violation resulting in penalties of \$500 to \$3,000 for first offenses and up to \$5,000 each for subsequent violations.

after Thanksgiving announcing the establishment of the anonymous telephone tip line.

The most recent Task Force meeting took place on **March 4, 2015**. Scott Jensen, the new DLT Director and Task Force Chairman, shared his experience about the misclassification issue while he was the Deputy Director of the Maryland Department of Labor, Licensing, and Regulation.

Also, the Task Force members:

- Approved the design and content of a beta version of its designated website, through which employers and workers can find relevant information and file misclassification complaints (www.Missclassification.RI.gov);
- Learned of the progress of its Joint Investigations working group, which is building a platform to handle and monitor complaints; and
- Committed to signing the data-sharing MOU by the next meeting of the group.

Recommendations

Since inception, the Task Force has focused mostly on building a cohesive structure out of many separate agencies that can work collectively to root out employee misclassification and the underground economy in Rhode Island. The organizational work needed to get this system built and functioning properly is heavy on the front end. Essentially, we are braiding the work of entities that have traditionally worked independently. In order to do it right, time has to be invested in planning and integration.

Often, when dealing with this important work, the focus shifts to the state's statutory definition of employee or the application of one common assessment across state government to ascertain if a worker is an employee or independent contractor. Although Rhode Island does not have a common defini-

tion, or even a common assessment tool, this has not stymied the Task Force and is not seen as an obstacle toward achieving our goal of reducing instances of misclassification in our state. The assessments used and relied upon in Rhode Island may not be uniform, but they do share common themes. These themes have allowed the Task Force to roll out an educational campaign and begin the important work of jointly investigating potential violations or malfeasance.

At this time, it would be premature to make recommendations regarding legislative changes necessary in order to foster an even playing field for Rhode Island businesses by defining employees or instituting one common assessment across the state. Rather, the Task Force will continue to focus on enhanced collaboration and using shared resources to properly enforce Rhode Island's existing labor laws.

Noteworthy

Acting on information that it received, the RI Division of Taxation investigated two major cases of employee misclassification in 2014. At the end, Taxation found that more than 650 RI employees had been improperly classified as independent contractors, and ordered the offending companies to pay more than \$290,000 in taxes.

Also in 2014, DLT's Workers' Compensation division ordered \$415,000 in fines to RI companies for failure to provide Workers' Comp coverage to employees.

In January 2015, after investigating several tips, Taxation found that 67 more RI workers had wrongly been identified as independent contractors instead of employees.

As its efforts toward fuller information sharing and collaboration take root, the Underground Economy and Employee Misclassification Task Force expects similar and greater results helping the State of Rhode Island and the Federal Government collect taxes and benefit program insurance premiums to which they are legally entitled.

Public Education/Outreach Campaign

The Task Force has promoted the misclassification initiative to Rhode Island workers and businesses in the following ways:

- Misclassification is currently featured on DLT's web site homepage, www.dlt.ri.gov.
- In December 2014, DLT sent the misclassification fact sheet to more than 30,000 Rhode Island employers in the same mailing as their quarterly Unemployment Insurance tax bill.
- The Task Force issued a press release on Dec. 8, 2014, announcing the start of an anonymous tip line for allegations of misclassification of workers as independent contractors instead of as employees. Providence Business News and local TV news stations picked up the story.
- Misclassification of workers was a topic at an Oct. 15, 2014, employer education seminar that DLT hosted. Nearly 100 local business people attended this event.
- Workers can register as independent contractors online at www.dlt.ri.gov/wc/iclists.htm, a web database maintained by the Workers' Compensation division of DLT. Individuals can use this page to search for independent contractors by name or hiring entity.
- Shortly, the Task Force will be launching an important component of our employer education campaign, an interactive website designated to this issue and located at www.Misclassification.RI.gov. The product of all Task Force member agencies, the website will have links to the complaint form and fact sheet, as well as more detailed information about why workplace fraud is such a destructive practice.
- www.Misclassification.RI.gov also will be available in Spanish.

FOR IMMEDIATE RELEASE

DECEMBER 8, 2014

Six-Agency Task Force Announces Establishment of Anonymous Tip Line for Allegations of Misclassification of Workers as Independent Contractors Instead of as Employees

A six-agency task force established to protect both workers' rights and law-abiding businesses that classify their employees properly announced today that it has set up an anonymous telephone tip line for allegations of misclassification.

Staffed by the Rhode Island Division of Taxation, the tip line number is 401-574-8477. Also, the task force is currently building a website to allow people to post tips online.

The chairman of the Joint Task Force on the Underground Economy and Employee Misclassification, DLT Director Charles J. Fogarty, and RI Tax Administrator David M. Sullivan also announced that their agencies have been meeting regularly to share information since the task force came into being in June with the enactment of the Fiscal Year 2015 State Budget. The panel's purpose is to:

1. coordinate joint efforts to combat fraudulent employment activities;
2. foster voluntary compliance with the law by educating workers and employers;
3. protect the health, safety and benefit rights of workers; and
4. protect law-abiding businesses from being undercut by companies that skirt the law. If warranted, an investigation may be referred to the Office of Attorney General.

"One of our major goals is educating, not violating, Rhode Island companies that might unknowingly be misclassifying their workers," Fogarty said. "At the same time, however, fighting misclassification is an important strategy to promoting shared prosperity in our state."

"While the vast majority of Rhode Island businesses are playing by the rules, those who aren't must be identified and stopped," said Attorney General Peter F. Kilmartin. "This small number of corrupt businesses is denying workers their basic protections by misclassifying employees in order to evade paying for unemployment benefits and workers' compensation insurance. The result is an uneven playing field that hurts honest and law-abiding employers."

Tax Administrator Sullivan said, "By using the tip line, workers and others can let us know about employers who are misclassifying workers as independent contractors. Rest assured that we will follow up on all tips. Businesses that don't play by the rules end up increasing the tax burden on those businesses that do play by the rules. By enforcing our laws, we can help to level the playing field — and that helps everyone, including employers and employees."

Task Force members include the DLT Director, Tax Administrator, Director of the Department of Business Regulation, Attorney General Peter F. Kilmartin, Public Safety Commissioner Colonel Steven G. O’Donnell, Chief Judge George Healy of the Workers’ Compensation Court and the Assistant Director of DLT’s Workforce Regulation and Safety division. The panel has held four meetings since its establishment in June.

It must submit an annual report to the Governor and Chairpersons of the House and Senate Finance Committees annually on March 15 summarizing its work during the previous year. Governor Lincoln D. Chafee proposed the task force as a way to address the problem of misclassification of employees as independent contractors. The Governor’s proposal was finalized in Article 8 of the FY 2015 enacted budget.

[A paper issued in August by the nonpartisan National Employment Law Project \(NELP\)](#) that looked at agency audits in 25 states found that “10 to 30 percent of employers, or even more, misclassify their employees as ‘independent contractors,’ meaning that several million workers nationally may be misclassified.” Based on a 2009 Government Accountability Office report estimating that independent contractor misclassification cost the federal government \$2.72 billion in revenues in 2006, the NELP report said, “State and federal governments lose billions in revenues annually as a result.”

The task force has begun a public education campaign, with DLT and the Division of Taxation each holding recent seminars and DLT mailing [an informational flyer](#) in September notifying RI’s 32,000 employers of their legal responsibilities. Individually and collectively, the agencies are explaining the differences between employees and independent contractors in order to encourage voluntary compliance with both federal and state laws alike.

In a press release issued earlier this month, the US Department of Labor stated:

“Business models that attempt to change or obscure the employment relationship through the use of independent contractors may not be used to evade compliance with federal labor law. Although legitimate independent contractors are an important part of our economy, the misclassification of employees presents a serious problem, as these employees often are denied access to critical benefits and protections — such as [family and medical leave](#), [overtime compensation](#), [minimum wage pay](#), Unemployment Insurance, [personal protective equipment](#) and [retirement benefits](#) — to which they are entitled. In addition, misclassification can create economic pressure for law-abiding business owners, who often find it difficult to compete with those who are skirting the law.”

#

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Tip line targets misclassifications

Saturday, December 13, 2014 12:05 am

A task force made up of six state agencies has established an anonymous tip line to report allegations of misclassification of workers as independent contractors instead of as employees.

Staffed by the R.I. Division of Taxation, the tip line number is 401-574-8477. Additionally, the task force said it is currently building a website to allow people to post tips online.

Fogarty said his agency has been meeting with R.I. Tax Administrator David M. Sullivan's office to share information on misclassification. Those meetings have covered subjects that include: coordinating joint efforts to combat fraudulent employment activities; fostering voluntary compliance with the law by educating workers and employers; protecting the health, safety and benefit rights of workers; and protecting law-abiding businesses from being undercut by companies that skirt the law.

The task force came into existence this year when the fiscal 2015 budget went into effect in July and has held four meetings. •

Applicable Laws, Rules and Regulations

DLT typically deals with employee misclassification in two divisions: Workforce Regulation and Safety and Workers' Compensation.

Workforce Regulation and Safety

- Historically, through investigations on related matters, both the Labor Standards and Prevailing Wage units have discovered cases where employees were potentially being misclassified as independent contractors. Such cases were referred to the Workers' Compensation division.
- In 2012, the General Assembly enacted a law (§28-14-19.1) which established misclassifying employees as a violation of the chapter, resulting in civil penalties of \$500 to \$3,000 for first offenses and up to \$5,000 each for subsequent violations.⁵
- The director has statutory discretion as to the amount of the fines based on factors present in the law.
- DLT is required to report any violations of the chapter to both the Contractors' Registration Board and the Tax Administrator.
- DLT has not dealt with any cases under this statute since it was established.

Workers' Compensation

- For Workers' Compensation insurance purposes, independent contractors are required under § 28-29-17.1 to file a Notice of Designation as Independent Contractor form with DLT.
 - DLT receives about 6,000 forms per year.
 - Independent contractors must file one form per job/contract – they often have multiple forms on file.
- When Workers' Compensation investigators discover cases of potential employee misclassification, those matters are referred to the Division of Taxation.
- Investigators collaborate with Prevailing Wage and Labor Standards investigators to share information on cases and conduct joint investigations when appropriate.
- Investigators collaborate with the Contractors' Registration Board to share information regarding unregistered contractors doing business in RI.

Department of Business Regulation

The Department of Business Regulation/Insurance Division has oversight of Workers' Compensation insurance in RI pursuant to Title 27 and PL 2003, Chapter 410.

The Insurance Division is responsible for conducting financial examinations of domestic insurance companies to ensure financial solvency and market conduct examinations of domestic or foreign insurers to ensure compliance with the insurance statutes and regulations. The Insurance Division monitors activities of all licensees such as insurance producers, claims adjusters and appraisers. In total, the Insurance Division regulates over 105,000 licensees.

RIGL §27-7.1 requires every insurance company issuing Workers' Compensation insurance in RI to file policy forms, rating plans and classification systems with the Department prior to issuance. The Department engages the services of consulting actuaries to review the rating plans to ensure compliance with applicable statutes. The

⁵ Along with Article 8 of the FY 2015 Enacted Budget, RIGL §28-14-19.1 involves and governs the Office of the RI Attorney General in the misclassification issue.

existence of an underground economy and misclassification of employees could significantly impact rates, but we are unable to quantify the impact without significantly more information.

The Insurance Division investigates consumer complaints against insurers and licensees to determine compliance with Title 27 and PL 2003, Chapter 410.

Formal challenges on the application of an insurer's rating system are heard by the RI Workers' Compensation Appeals Board under RIGL §27-7.1-11.1. Decisions of the Appeals Board are appealable to the Director of DBR. The WC Appeals Board does not have jurisdiction over disputes involving independent contractor vs. employee classification.

The Department works closely with the RI DLT. Through the complaint process, the Department refers workers' compensation matters that fall outside our jurisdiction, including disputes involving independent contractor vs. employee, to the RI Dept of Labor of Training for review and investigation.

Accomplishments, Goals and Next Steps

Anonymous Tip Line

Thanks to the efforts of the Division of Taxation, the Task Force established an anonymous tip line in December. The number is (401) 574-TIPS (8477). Staffed by Taxation employees, this conduit already has yielded actionable tips for the Task Force.

Website

The Task Force is finalizing a website that will be accessible through the websites of member agencies. It will include a Report Misclassification form, an online complaint form to allow members of the public to lodge complaints anonymously. It also will have an interactive testing tool to help determine if workers are employees or independent contractors.

The website, www.Misclassification.RI.gov, will be going live shortly.

Employer Education Outreach

By law and by action, raising the awareness of RI employers about workplace fraud and its high costs to our workers and state is and will remain the Task Force's highest priority.

Throughout this report, we have included examples of how we have been reaching out to companies since inception last summer. Our website, soon to be launched, will be our most recent action step.

DLT will continue to use its quarterly Unemployment Insurance tax bill mailings sent to employers to raise awareness. Both DLT and Division of Taxation also will hold employer seminars periodically to bring attention to the issue. The Task Force always will be thinking of ways to get this message out.

Joint Investigations Working Group

The Task Force started a Joint Investigations working group to help member agencies overcome the administrative and jurisdictional hurdles that exist and build a framework for handling complaints and conducting joint investigations.

This is one of the law's major intents, and the Task Force is taking care to build this process the right way.

Data Sharing

Breaking down jurisdictional silos, speaking with a "common language," and sharing relevant data to stem workplace fraud also are major goals of the Task Force's enabling statute.

The Task Force is currently developing a single, secure database through which member agencies can store, access, search for, and obtain accurate information to help streamline investigations and active cases — and deliver results to the State of Rhode Island.

Task Force agencies are reviewing and shortly expected to sign a memorandum of understanding (MOU) stating that information sharing is confidential, identifying the statutes governing precisely what data may be shared, and explaining the mechanics of how the key data elements will be shared.

The Task Force also is pursuing an MOU with the US Department of Labor, to better align state and federal agencies and resources in handling some workplace fraud cases.

Appendix

UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION TASK FORCE MEETING

Tuesday, July 15, 2014
9:00 am

1511 Pontiac Avenue, Bldg 70, 2nd Floor Conference Room
Cranston, RI 02920

In attendance:

Charles Fogarty, DLT Director - Chair
David Sullivan, Tax Administrator
Paula Pallozzi, Department of Business Regulation
Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety
Genevieve Allaire Johnson, Attorney General's Office Designee
Major Todd Catlow, Commissioner of the Department of Public Safety Designee
George E. Healy, Jr, Chief Judge of Workers' Compensation Court
George Salem, Associate Judge, Workers' Compensation Court

- 1.) **Call to Order:** The meeting was called to order at 9:06 am by DLT Director and Chair, Charles Fogarty.

- 2.) **Overview of Article 8:** DLT Assistant Director, Matt Weldon provides an overview of Article 8 noting the Task Force's responsibilities: 1.) Foster voluntary compliance with the law by educating business owners and employees; 2) Conduct joint, targeted investigation and enforcement; and 3) Annual report.

- 3.) **Misclassification: Identification and Process / Response:** Agency representatives discussed the mechanisms they currently use for identification such as the IRS 20 point check. The discussion includes attempting to establish a standard that is understood by the task force and can be articulated to the public.

- 4.) **Collaborative Enforcement Efforts:** There is discussion and it is recommended that the first initiative be education. Employers should be educated by the Task Force explaining the misclassification rules, the work of the Task Force and requirements of the misclassification rules. The education effort should include informational inserts in DLT quarterly mailings, educational seminars to educate employers, additions to newsletters and social media is discussed as a vehicle of education.

It is recommended that Sean Fontes, DLT Executive Counsel, be given the contact information of the legal counsels for each Task Force member agency in order for him to begin the process of gathering and assessing the various laws and rules governing data sharing for each member agencies.

David Sullivan, George Healy and Matt Weldon volunteer to work on content and securing locations of educational seminars.

5.) Data Sharing: DLT Executive Counsel Sean Fontes addresses the Task Force regarding 42-155-5 and the data sharing requirement of this law, noting that sharing of confidential data is governed by state and federal law and each agency is governed by different statutes pertaining to the confidential data each agency maintains.

Counsel Fontes recommends the Task Force identify its initiatives and identify what type of data is necessary for those initiatives as well as identify the state / federal laws that might apply to the sharing of confidential data maintained by each member agency.

Counsel Fontes volunteers to be the liaison for gathering and assessing state and federal laws that govern sharing of confidential data maintained by each member agency.

****For information:** DLT Director and Chair, Charles Fogarty, asks members how often they would like to meet. It is recommended the Task Force meet monthly with the possibility of meeting more frequently as educational seminars approach. The next meeting will be in one month.

It is anticipated that a draft mailing insert and an outline and dates for educational seminars will be presented at the next meeting. Sean Fontes, DLT Executive Counsel, will work with agency legal counsels on the data sharing laws.

6.) Adjournment: The meeting adjourned at 9:36 am.

**UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION TASK FORCE MEETING**

**Tuesday, August 12, 2014
9:00 am**

**1511 Pontiac Avenue, Bldg 70, 2nd Floor Conference Room
Cranston, RI 02920**

In attendance:

Charles Fogarty, DLT Director - Chair
Genevieve Allaire Johnson, Attorney General's Office Designee
Phil D'Ambra, representing David Sullivan, Tax Administrator
Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety
George Salem, Associate Judge, Workers' Compensation Court

Not in attendance:

Major Todd Catlow, Commissioner of the Department of Public Safety Designee
George E. Healy, Jr, Chief Judge of Workers' Compensation Court
Paula Pallozzi, Department of Business Regulation

Also in attendance were Matt Weldon, DLT Assistant Director and Sean Fontes, DLT Executive Counsel.

1.) Call to Order: The meeting was called to order at 9:04 am by DLT Director and Chair, Charles Fogarty. There is a quorum.

2.) Approval of the Previous Meeting's Minutes: George Salem made a motion to accept the minutes to the previous meeting of July 15, 2014 as presented; seconded by Genevieve Allaire Johnson; and passed unanimously.

3.) Employer Education / Outreach:

Informational Flyer: In conjunction with the Division of Taxation and DLT, an informational flyer that will be included in mailings has been drafted and was reviewed by the task force members. The mailing is scheduled for early September.

Phil D'Ambra (Taxation) informed the task force that a website is being worked on and recommends adding a link for task force information to existing websites.

It is also noted that the actual "hotline" telephone number is not available yet.

With the exception of the web information and the hotline telephone number, Joseph Degnan made a motion to approve the flyer as presented; seconded by George Salem and passed unanimously.

Seminars: Phil D’Ambra informed members that the dates for seminars could not be confirmed with CCRI until the end of August as they are working on their own class scheduling. December and/or January appear to be the earliest possibilities. It is noted that the seminars would be taking place at all CCRI locations.

Taxation will prepare an agenda and have a draft available for review at the next meeting.

DLT Director Fogarty recommends the seminars be video taped and be made available online.

The next tax form will be going out in December and a notice flyer can be included.

DLT Assistant Director, Matt Weldon, informed the task force that he will reserve space in quarterly mailings for task force information.

**Phil D’Ambra distributed the 2013 Annual Report for the Massachusetts Joint Enforcement Task Force on the Underground Economy and Employee Misclassification. The Massachusetts task force has existed since 2008.

4.) Data-Sharing Report: DLT Executive Counsel Sean Fontes addressed the task force. Counsel Fontes has reached out to the legal units of the member agencies and has received the State and Federal statutes that may be impacted. Counsel Fontes will draft a memorandum of understanding of how to handle shared data. The draft will be available at the next meeting.

5.) Public Comment Period:

Attorney Gregory Mancini addressed the task force. Mr. Mancini expressed agreement with the task force on the need for definitions of terms. Mr. Mancini noted that simpler is better. Mr. Mancini also informed the task force of a “misclassification” complaint that he had filed with DLT that came back to him as a “wage” complaint and noted that as more complaints come in this may be confusing. DLT Director Fogarty later noted that the department will internally look at “misclassification” vs. “wage” complaints.

Mr. Mancini also inquired if the Contractor’s Registration Board was part of the task force. The Contractor’s Registration Board is not part of the task force. Director Fogarty recommends reaching out to CRB to inform them of future meetings.

6.) Adjournment: A motion to adjourn was made by Genevieve Allaire Johnson and seconded by George Salem. There being no opposition, the meeting adjourned at 9:23 am.

UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION TASK FORCE MEETING

Tuesday, October 14, 2014
9:00 am

1511 Pontiac Avenue, Bldg 70, 2nd Floor Conference Room
Cranston, RI 02920

In attendance:

Charles Fogarty, DLT Director - Chair

David Sullivan, Tax Administrator

Paula Pallozzi, Department of Business Regulation

Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety

Genevieve Allaire Johnson, Attorney General's Office Designee

John Alfred, Commissioner of the Department of Public Safety Designee

George Salem Jr, Associate Judge, Workers' Compensation Court Designee

1.) Call to Order: The meeting was called to order at 9:10 am by DLT Director and Chair, Charles Fogarty.

2.) Approval of the Previous Meeting's Minutes: A motion was made by George Salem Jr to accept the minutes to the previous meeting (8/12/2014); seconded by Joseph Degnan and passed unanimously.

3.) Education / Outreach: DLT Assistant Director, Matt Weldon, addressed the task force.

Information flyer: The approved informational flyer was sent out in the September mailing. Approximately 33,000 – 34,000 were mailed.

Website / Hotline: Information for the website is requested from task force members. The web address is www.tax.ri.gov/taskforce.

David Sullivan, Taxation, addressed the task force regarding the Hotline. The Hotline number is (401) 574 – TIPS. Mr. Sullivan notes the hotline is staffed by a taxation investigator and is anonymous. The hope is to role out the hotline to the media in the next few weeks. DLT and Taxation Media personnel will work together on the role out.

Seminars: DLT UI Fraud will be conducting a seminar on 10/15/14. Taxation will attend for the portion on misclassification.

David Sullivan (Taxation) informs the task force that the Taxation seminar cycle has begun. Upcoming seminars are scheduled for November in Newport and Warwick.

Matt Weldon notes that he is seeking information from other states regarding their efforts on misclassification and will report at the next meeting.

4.) Building an Investigative Framework: Task force members discuss their current misclassification complaint processes.

Joseph Degnan, DLT Assistant Director of Workforce Regulation and Safety (WRS), addressed the task force. Complaints usually come in as part of a wage complaint to the Labor Standards Unit. Mr. Degnan explained the Labor Standards Unit's investigative process. The Department is creating a new Misclassification Complaint Form and is looking for information regarding what should be included on the form. The draft form will be shared with Taxation and Workers Compensation. The goal is to finalize the form by the end of the month.

Paula Pallozzi, DBR, addressed the task force regarding their investigative process. Ms. Pallozzi notes that complaints come after an insurance company has conducted an audit.

David Sullivan (Taxation) recommended a sub group to meet to discuss that cases each agency has as a part of data sharing. Matt Weldon will identify the parties that will meet.

George Whalen, Contractors' Registration and Licensing Board, was invited to today's meeting for input on this matter. Mr. Whalen addressed the task force of the need to pursue independent contractors; encouraged uniformity in definitions across agencies; looking to technology and smart phone applications as a way to file complaints. Mr. Whalen feels the misclassification is a problem in the construction industry. Mr. Whalen informed the task force of the Contractors Registration and Licensing Board willingness to assist in any way.

5.) Data Sharing Agreements: Sean Fontes, DLT Executive Counsel, presents the task force with a draft Memo of Understanding (MOU) regarding data sharing. Counsel Fontes notes the MOU that the information sharing is confidential, identifies the statutes of each division that speaks to the key elements shared and the process of how data will be handled. Counsel Fontes requests comments and will initiate signing once the MOU has been approved. The goal is to have the MOU signed by the next meeting.

5.) Public Comment Period:

Attorney Greg Mancini (Build RI) addressed the task force regarding the calculation of damages for misclassification for incentives to comply with the law or file a complaint; recommends using federal definitions; educating contractors as well as employers; and data sharing.

Tom Furey (Contractors' Registration and Licensing Board) addressed the task force suggesting utilizing OSHA investigations to identify contractors.

Tom Savoie (Carpenters LU94) addressed the task force and expressed his appreciation for the task force and offers assistance with information. Mr. Savoie recommends the task force look at mill projects with tax credits for misclassifications.

7.) Adjournment: A motion to adjourn was made by Genevieve Allaire Johnson; seconded by David Sullivan and passed unanimously. The meeting adjourned at 9:55 am.

UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION TASK FORCE

Thursday November 20, 2014
9:00 am

1511 Pontiac Avenue, 1st Floor Conference Room
Cranston, RI 02920

Members in attendance:

Charles Fogarty, DLT Director- Chair
David Sullivan, Tax Administrator
Genevieve Allaire Johnson, Attorney General's Office Designee
Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety
Chris Dicomitis, Captain Rhode Island State Police
Paula Pallozzi, Department of Business Regulation
George Salem Jr., Judge Worker's Comp Court

Also in attendance:

M.D. Lynch, VP- Legal, Beacon Mutual
Matt Carey, Chief Administrator, Worker's Comp., DLT
Phil D'Ambra, Chief Employer, Revenue
George Whalen, Executive Director RI, RICRB

1.) **Call to Order:** The meeting was called to order at 9:05 am by DLT Director and Chair, Charles Fogarty.

2.) **Approval of the Previous Meeting's Minutes:** Previous meeting minutes of 10/14/2014 was approved.

3.) **Joint Investigations Sub-Committee**

Matt Weldon, discussed the forming of a sub-committee which has representatives from Taxation, Workforce Regulation and Safety and Worker's Compensation. The sub-committee met on Tuesday November 18, 2014 to discuss how to move forward and work independently on common issues. The sub-committee will meet every 2 weeks and then report to the Task Force. Matt Weldon discussed website development and will meet with representatives from DOIT. Matt Weldon would like to have the website up and running in a month. Matt Weldon also distributed model of a form from the State of CT for the committee's review. David Sullivan has a form within Taxation that he will forward to Matt.

4.) **Misclassification Hotline/Subcommittee Promotion**

Michael Healey, distributed a draft of Joint Press Release for review by the committee. Final version will be approved by the committee and sign off on it before it is released and also coordinate with Colonel O'Donnell of the State Police.

5.) Data Sharing Agreements (Chair/DLT Exec. Counsel)

Sean Fontes addressed the committee about indemnification clause.

6.) Public Comment Period

There is a Whistle Blowers Law, Title 28, which a copy will be sent to legal counsel at the Division of Taxation.

7.) Adjournment: Meeting was adjourned at 9:50 am.

UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION TASK FORCE MEETING

Wednesday, March 4, 2015
9:00 am

1511 Pontiac Avenue, Conference Room 73-1
Cranston, RI 02920

In attendance:x

Scott Jensen, DLT Director - Chair

David Sullivan, Tax Administrator

Paula Pallozzi, Department of Business Regulation

Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety

Genevieve Allaire Johnson, Attorney General's Office Designee

George Salem Jr, Associate Judge, Workers' Compensation Court Designee

The Commissioner of the Department of Public Safety (or designee) was not in attendance.

Also in attendance were Matt Weldon, DLT Assistant Director and Sean Fontes, DLT Executive Legal Counsel.

1.) Welcome / Call to Order: The meeting was called to order at 9:07 am by DLT Director and Chair, Scott Jensen.

2.) Approval of the Previous Meeting's Minutes: A motion was made by George Salem Jr to approve the minutes to the previous meeting (11/20/2014); seconded by Genevieve Allaire Johnson and passed unanimously.

3.) Introduction/Background:

Administration's Focus/Approach: DLT Director Scott Jensen addressed the task force. Funding is being sought for a Misclassification Unit.

Given multiple agencies may be investigating the same employer; how agencies could coordinate/consolidate efforts should be looked at.

Past Experience: Director Jensen addressed the taskforce on his experience in Maryland. Maryland also set up a task force and Director Jensen hopes that this task force can learn from that experience.

4.) Outreach Efforts: DLT Assistant Director, Matt Weldon, addressed the task force. Employer Flyer: The informational flyer has been sent out to over 30,000 employers in RI.

Employer Seminars: DLT UI has added a portion on misclassification to their employer seminar.

Press Release / Media Coverage: A copy of the press release was distributed to members. A copy of a PBN article was also distributed. It was noted that coverage was also seen on news channels.

Hotline: Taxation has developed tip hotline, 574-TIPS. David Sullivan reports that some outreach has been done. The hotline has received over 20 tips so far, though some have been unrelated to misclassification. Mr. Sullivan reports the hotline is working well.

Website: Matt Weldon reports that a stand alone website has been developed but is not live yet. The web address is www.Misclassification.RI.gov. The goal will be to have an online form as well. Mr. Weldon distributes screenshots of the site for members to review and requests feedback. There was no objection to the site going live. DLT Director Jensen recommends promotion of the site before it goes live. The site should be up within 2 weeks.

5.) Joint Investigations Workgroup:

Update on activities: Matt Weldon provides an update. The group is working to build a framework to deal with complaints. Taxation takes in the complaint and shares the information with the other agencies. Complaints also come through DLT Workforce Regulation and Safety (Prevailing Wage complaints and Labor Standards complaints).

Database Development: Matt Weldon reports that a database is in development.

Director Jensen inquires if the workgroup has looked at who could be deployed for investigations at odd hours. David Sullivan (Taxation) informs that Taxation does have investigators that could be used though DLT has greater strength to shut down jobs. Taxation will work with DLT to look into the matter.

Social media is discussed.

6.) Report to General Assembly: Matt Weldon informs that the report to the General Assembly is due March 15, 2015 and every March 15th thereafter. Mr. Weldon will draft the report to be reviewed by taskforce members for feedback before being submitted.

7.) Data Sharing Agreements: Sean Fontes, DLT Executive Counsel, addressed the taskforce regarding the sharing of information amongst the agencies of the taskforce.

Counsel Fontes has drafted a MOU that has been circulated to the legal counsel of each agency. The MOU will need to be signed by each agency and should be completed in a week or two.

8.) Public Comment Period:

- Donald Epifano, of US DOL, addressed the taskforce expressing his support of the taskforce and explained how US DOL works with the State of Connecticut and offers the same type of relationship. Matt Weldon will work on a MOU with USDOL and include Mr. Epifano in the workgroup.
- The task force was informed of House Bill 5388 that would require that the designation of a worker as an "independent contractor" form to be filed annually, with a fifty dollar (\$50) filing fee with the director of revenue, and not the director of labor and training.
- Joe Walsh (IBEW Local 99) inquired of a single definition of employee.
- Attorney Greg Mancini (Build RI) addressed the task force regarding mechanical liens. Mr. Mancini also asked the Department, going forward, to reconsider its interpretation of the law or submit legislation to broaden the law referencing a hearing decision he had received.
- Michael Sabitoni (President of RI Building and Construction Trades Council and Business Agent for the Laborers Union) addressed the taskforce that the deterrent in construction to combat misclassification is the "example" and, when appropriate, an example should be made public.

The public is encouraged to provide the task force with any tips they may have.

9.) Adjournment: The meeting adjourned at 10:23 am.



RI Department of Labor and Training

Administrative Offices: 1511 Pontiac Avenue • Cranston, RI 02920-4407

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