

## **RECENT LEGISLATION OTHER STATES TO ADDRESS EMPLOYEE MISCLASSIFICATION**

Linda Eissmann, Principal Research Analyst  
Legislative Counsel Bureau  
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### **Select Legislation**

#### **Colorado**

In 2009, Colorado enacted House Bill (HB) 09-1310 concerning the misclassification of employees as independent contractors for purposes of the "Colorado Employment Security Act." The bill contains two primary provisions: (a) a means to investigate complaints of employee misclassification with associated penalties; and (b) a statewide study of the extent of the problem.

The measure provides that the Division of Employment and Training in the Department of Labor and Employment is responsible for accepting and investigating complaints regarding employee misclassification and for enforcing the requirements of the Act. The measure further allows any person to file a written complaint alleging misclassification and sets forth a process and timeline for investigating and rendering a determination regarding each complaint.

If an employer is found to have willfully disregarded the law, the bill allows for a fine of up to \$5,000 per misclassified employee for the first offense. For second and subsequent offenses, the fine is increased to \$25,000 per misclassified employee and issuance of an order prohibiting the employer from contracting with the State of Colorado for a period up to two years. An appeals process is described in the measure.

A report must be submitted to the Legislature with information concerning the complaints received and the outcome of the investigations.

Further, HB 09-1310 provides for a statewide study of the issue of employee misclassification, including estimates on the amount of revenue lost to the state and an analysis of the extent of the problem.

**EXHIBIT E - EMPMISCLASS**  
**Document consists of 2 pages.**  
**Entire exhibit provided.**  
**Meeting Date: 01-22-10**

## **Delaware**

Delaware's Workplace Fraud Act of 2009 (House Bill 230) is an employee misclassification bill that increases penalties for construction employers who knowingly misclassify employees as contractors in order to evade state and federal taxes and wage and hour laws.

Under the law, the Department of Labor investigators can question employers and other employees, enter and inspect places of business and examine and copy books, registers, payrolls, and other records in order to determine if workplace fraud has occurred. Inspectors can also request sworn written statements from employers and interview witnesses under oath.

Employers are subject to stop work orders, a \$20,000 penalty for each misclassified employee, and an administrative penalty of up to \$500 per day for compliance failure. If the employer has a contract with a public body, that agency may withhold payment to the offending employer in an amount sufficient to pay back wages, benefits, taxes, or other necessary contributions to the affected workers. The bill also prevents employers from retaliating against workers and allows workers to sue for treble damages including attorney's fees.

## **Maryland**

Maryland's Workplace Fraud Act of 2009 (Senate Bill 909) creates a presumption of employee status for employees working in the construction and landscape industries. The measure provides criteria for determining whether a worker is an employee or an independent contractor, and authorizes the Commissioner of Labor and Industry to initiate an investigation as to whether a violation has occurred. The bill also permits information-sharing among state agencies, and establishes certain presumptions and evidentiary considerations.

Employers who come into timely compliance will not be assessed a civil penalty. Employers who do not come into timely compliance will be assessed a penalty for each misclassified employee, which will be increased for subsequent violations.