

SUMMARY OF RECOMMENDATIONS

LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY EMPLOYEE MISCLASSIFICATION

Senate Concurrent Resolution No. 26
(File No. 100, *Statutes of Nevada 2009*)

The following is a summary of the recommendations approved during the 2009-2010 Interim by the Legislative Commission's Subcommittee to Study Employee Misclassification. The following bill draft requests (BDRs) will be submitted to the 76th Session of the Nevada Legislature in 2011.

BILL DRAFT REQUESTS

1. Draft legislation to create a Task Force on Employee Misclassification to ensure communication among member agencies, receive and review audits conducted by agencies concerning employees who are misclassified, create a structure for fees and penalties levied in the cases of employees misclassified as independent contractors, and make reports to the Legislature. **(BDR —164)**

Membership of the Task Force will be comprised of ten members, including five State agencies:

- Labor Commissioner or designee;
- Administrator of the Division of Industrial Relations (representing the Workers' Compensation Program), Department of Business and Industry, or designee;
- Administrator of the Employment Security Division, Department of Employment, Training and Rehabilitation, or designee;
- Executive Director of the Department of Taxation or designee; and
- Attorney General or designee;

and representatives of the following five groups:

- A large employer (more than 500 employees);
- A small employer (less than 500 employees);
- An independent contractor;

- A labor organization; and
- The general public.

The representatives of the five groups indicated will be appointed by the Legislative Commission from names submitted by the Majority Leader of the Senate, Minority Leader of the Senate, Speaker of the Assembly, Minority Leader of the Assembly, and the Governor.

2. Draft legislation to expand the use of the three-part “ABC Test” in *Nevada Revised Statutes* 612.085 (currently used for unemployment insurance and by extension for the Modified Business Tax) to include application for the purposes of workers’ compensation. The measure will also require inclusion of information concerning the difference between an employee and an independent contractor on State labor law posters posted in areas where work is performed or employees congregate. **(BDR —168)**
3. Draft legislation to impose a civil penalty against anyone who knowingly advises an employer to misclassify employees as independent contractors. **(BDR —167)**
4. Draft legislation to provide for a private right of action for workers who are misclassified and provide for reimbursement of legal expenses to the claimant by the employer. The private right of action becomes available to the worker after 120 days from the date a complaint is filed with the appropriate agency. **(BDR —166)**
5. Draft legislation to implement a fine on employers who misclassify their employees as independent contractors of \$5,000 per employee for the first offense, \$15,000 per employee for the second offense, and \$25,000 per employee and loss of ability to do business for a period of three years on the third offense. **(BDR —165)**