

## **SENATE STANDING COMMITTEE ON LABOR - NOTICE OF PUBLIC HEARING**

### **SUBJECT: Employee Misclassification in New York's Underground Economy**

**PURPOSE: To study the loss of revenue flowing to the State's underground economy as a result of employee misclassification and to review the impact on workers and employers from misclassification.**

**January 13, 2010  
10:00 a.m.  
Hearing Room B  
Legislative Office Building  
Albany, New York 12247**

New York State is facing an unprecedented budget crisis. As the government tries to find new revenue sources, it is time to turn attention to New York's underground economy and in particular, the problem of employee misclassification. Misclassification costs the State millions of dollars each year. Employers who misclassify their workers as independent contractors, instead of as employees, do not withhold the personal income taxes of workers, or taxes for unemployment insurance, social security, Medicare, workers' compensation and disability insurance. By hiring workers off the books, these employers are able to pocket millions in taxes they would otherwise pay to the State.

Employee misclassification, especially in the construction industry, has been widely reported for years. In New York City alone, the annual loss to the local economy has been estimated to exceed \$70 million in personal income taxes and \$272 million in other payroll taxes. Reports of construction workers being paid as little as \$10 an hour – well below the State's prevailing wage rates—are not unusual. Misclassification of the State's private industry workforce is estimated to exceed 10%. The New York State Joint Enforcement Task Force on Employee Misclassification has uncovered more than 12,000 cases of misclassified workers -- more than half of which are upstate -- and assessed over \$4.8 million in unemployment taxes, over \$1.1 million in workers' compensation fines and penalties, and more than \$12 million in unpaid wages.

Workers and law-abiding employers are directly hurt by employee misclassification as well. Workers who are injured on the job or laid off must get by without workers' compensation or unemployment benefits, but remain liable for the employment taxes their employer has avoided paying. Employers who pay their share of payroll taxes are placed at a competitive disadvantage since they are easily underbid by contractors who flaunt labor laws and contribute to the underground economy.

Unlike New York, other states have passed laws that require their employers to meet a set of standards to properly classify workers as either employees or independent contractors. These laws have allowed states to recover tax revenues that would have otherwise been lost to their underground economies. The Senate Labor Committee will hold a hearing to review the problem of employee misclassification in New York State and legislative proposals to address the problem. Public input is requested concerning:

1. The amount of revenue lost to New York State's underground economy from employee misclassification and the cost impact on state and local governments.
2. The industries affected by employee misclassification in New York State and the impact on workers and employers.
3. The extent of employee misclassification in New York City's construction industry, including residential and commercial housing.
4. Laws in other states that address employee misclassification and their effectiveness.
5. Legislative proposals in New York to address employee misclassification and curb the underground economy.

Persons wishing to present testimony at this hearing should complete and return the enclosed reply form as soon as possible. It is important that the reply form be fully completed and returned so that persons may be notified in the event of emergency postponement or cancellation.

Oral testimony will be limited to ten minutes duration. Written testimony will also be accepted and may be sent to the contact person listed on the reply form. In preparing the order of witnesses, the Committee will attempt to accommodate individual requests to speak at particular times in view of special circumstances. These requests should be made on the attached reply form or communicated to Committee staff as early as possible. In the absence of a request, witnesses will be scheduled in the order in which reply forms are postmarked.

Ten copies of any prepared testimony should be submitted at the hearing registration desk. The Committee would appreciate advance receipt of prepared statements. In order to further publicize the hearing, please inform interested parties of the Committee's interest in receiving written testimony from all sources.

In order to meet the needs of those who may have a disability, the Legislature, in accordance with its policy of non-discrimination on the basis of disability, as well as the 1990 Americans with Disabilities Act (ADA), has made its facilities and services available to all individuals with disabilities. For individuals with disabilities, accommodations will be provided, upon reasonable request, to afford such individuals access and admission to the Legislature's facilities and activities.

Persons wishing to present testimony at the public hearing on Employee Misclassification and the Underground Economy are requested to complete this reply form as soon as possible and mail, e-mail or fax it to: Sarah Coligan

E-mail: [coligan@senate.state.ny.us](mailto:coligan@senate.state.ny.us)

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