



CHERIE K. BERRY
COMMISSIONER

KEVIN BEAUREGARD
ASSISTANT DEPUTY COMMISSIONER
OCCUPATIONAL SAFETY AND HEALTH DIVISION

MEMO

To: OSH Division

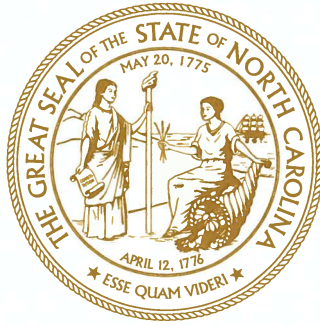
From: Kevin Beauregard, Assistant Deputy Commissioner

Date: February 19, 2016

Re: Executive Order #83 Employee and Employer Fairness Initiative (Employee Misclassification)

On December 18, 2015, Governor Pat McCrory issued Executive Order #83, entitled the "Employee and Employer Fairness Initiative". This Executive Order addresses the issue of businesses that engage in "employee misclassification" by improperly classifying their employees as independent contractors which enables businesses to avoid the liabilities and obligations imposed by state and federal law. The order also establishes an Employee Classification Section within the N.C. Industrial Commission to investigate complaints and referrals associated with employee misclassification. Finally, the Executive Order encourages the Commissioner of Labor and other agencies to designate employees to serve as a liaison to this new Industrial Commission Section. It has been requested that the designated NCDOL liaison provide referrals associated with potential instances of employee misclassification to the Industrial Commission on a monthly basis. NCDOL has indicated to the head of this new program that we will make such referrals when we become aware of a potential employee misclassification.

A new State "S" code has been created in OSHA Express (OE) for compliance officers to identify inspections where an issue of potential employee misclassification has arisen. Effective March 1, 2016, OSH compliance officers shall use the "S 18 IC MISCLASS Referral" code in the optional information field (on the OE Inspection Update form) if an inspected employer claims that either they or the workers performing activities for them are independent contractors but the compliance officer has determined that there is an employer-employee relationship that falls under OSHNC coverage (per the procedures in Chapter 4 of the FOM). A monthly report of all such businesses coded in this manner will be provided to the N.C. Industrial Commission by the designated liaison. The monthly report shall include the business name, business address, business phone number, citation date, and Tax ID (if available and not a SS#).



State of North Carolina

PAT McCrory
GOVERNOR

December 18, 2015

EXECUTIVE ORDER NO. 83

EMPLOYEE AND EMPLOYER FAIRNESS INITIATIVE

WHEREAS, certain businesses engage in "employee misclassification" by improperly classifying their employees as independent contractors which enables these businesses to avoid the liabilities and obligations imposed by state and federal law;

WHEREAS, the practice of employee misclassification: (1) deprives North Carolina employees of their lawful rights and protections; (2) affords unethical business owners with a competitive advantage at the expense of lawful businesses; and (3) divests the state and the general public of significant tax revenues;

WHEREAS, increased cooperation and streamlined information sharing between state agencies is an effective tool for preventing and combating the abuses inherent in employee misclassification;

WHEREAS, the consolidation of resources among relevant agencies is anticipated to effectively bolster enforcement initiatives without unnecessarily increasing the size of government or unduly burdening North Carolina businesses;

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS HEREBY ORDERED:**

Section 1.

The Employee Classification Section (hereinafter "Section") is established within the Industrial Commission. The Chairman of the Industrial Commission (hereinafter "Chairman") shall appoint a Director of the Employee Classification Section (hereinafter "Director") to direct and oversee the Section in carrying out its duties as provided herein. The Chairman may employ clerical staff, investigators, and other staff as is necessary for the Section to perform its duties. The Chairman shall provide the Section with adequate offices in which the Section's records shall be kept and its official business transacted during regular business hours.

Section 2.

The Secretary of Revenue, the Chairman of the Industrial Commission, and the Assistant Secretary of Commerce for the Division of Employment Security shall each designate an employee of their respective agencies to serve as liaisons to the Section. The Commissioner of Labor and Commissioner of Insurance are each invited to designate an employee of their respective agencies to serve as liaisons to the Section.

The Section and agency liaisons shall have the following duties:

- (1) The Section shall be available during business hours to receive complaints of employee misclassification by telephonic, written, or electronic communication. Complaints of employee misclassification may be made directly to the Director or may originate from agency liaisons.
- (2) For each complaint made to the Director, the Director shall create a file and refer the complaint to each of the agency liaisons. Each liaison shall conduct his or her own independent investigation to determine whether violations of their respective operating statutes have occurred as a result of employee misclassification. Each liaison who finds that a violation has occurred shall ensure that necessary enforcement actions are initiated under their respective agencies' operating statutes. Liaisons shall provide quarterly reports to the Director as to the final outcome of all investigations and/or enforcement actions. Each report shall include, at a minimum, the number of complaints of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of complaints referred from the liaison to the Director.
- (3) For each complaint made directly to an agency liaison, the liaison shall refer the complaint to the Director. The Director and liaisons shall then follow the procedure set forth in paragraph (2) above.
- (4) The Director shall coordinate with appropriate state agencies, Office of the Governor, and legislative staff to create and sustain comprehensive measures to combat employee misclassification practices.
- (5) The Director, agency liaisons, and the Department of Information Technology shall develop methods and best practices for information sharing between State agencies in order to proactively identify possible instances of employee misclassification.
- (6) The Director shall develop methods and strategies to educate employers, employees, and the public about proper classification of employees and the prevention of employee misclassification.

Section 3.

By January 1 of each year, the Section shall publish to the Office of the Governor a report of the Section's activities, together with any recommendations or proposed legislative changes as the Section deems advisable. This report shall include, at a minimum, the number of reports of employee misclassification received, the number and amount of back taxes, wages, benefits, penalties, or other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies collected, and the number of cases referred to each State agency.

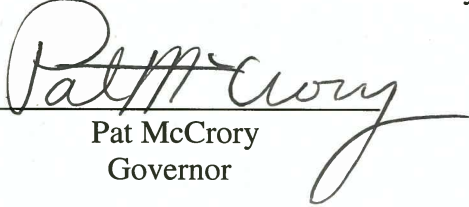
Section 4.

All cabinet agencies, departments, and boards and commissions are directed to provide the Section with all reasonable assistance and information that may be requested in furtherance of its duties as set forth in Section 2. All Council of State heads are invited to share all relevant information and collaborate with the Section in its efforts to prevent and identify offenses arising from employee misclassification.

Section 5.

This Executive Order shall be effective immediately and shall remain in effect until rescinded. Executive Order No. 125 issued on August 22, 2012 is hereby terminated.

IN WITNESS WHEREOF, I have hereunto signed my named and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this the eighteenth day of December in the year of our Lord two thousand and fifteen, and of the Independence of the United States of America the two hundredth and thirty-nine.


Pat McCrory
Governor

ATTEST:


Elaine Marshall
Secretary of State

