



NEW YORK STATE SENATOR

George Onorato

Senator Onorato Says Findings By State Task Force On Employee Misclassification Point To Need For Action

GEORGE ONORATO July 28, 2009

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NEWS FROM

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Onorato, Other Lawmakers & Labor Leaders Say Legislation Is Needed To Crack Down On High Rate Of Misclassification in New York State's Construction Industry

State Senator **George Onorato** (D-Queens), the chairman of the Senate Standing Committee on Labor, today said that recent findings by the New York State Joint Enforcement Task Force on Employee Misclassification “clearly show that action needs to be taken to stop employers from misclassifying workers as independent contractors, which is sending millions of dollars in tax revenue into the state’s underground economy.”

The Queens lawmaker explained that the Task Force, created through Executive Order in September, 2007, brought together various government agencies – including the State Department of Labor, Workers’ Compensation Board, Department of Taxation and Finance, Attorney General, and the State and City Comptroller’s Offices -- to jointly examine the prevalence of employee misclassification in New York’s construction industry and other business sectors. The panel’s recent annual report found 12,300 instances of employee misclassification throughout the state, and more than \$157 million in unreported wages. These violations, so far, have led to the recovery of \$4.8 million in unpaid unemployment taxes, more than \$1 million in unemployment insurance fraud penalties, more than \$12 million in unpaid wages, and more than \$1.1 million in workers’ compensation fines and penalties. Most of the violations, statewide, were found in the construction industry.

“There is no question that employee misclassification is a serious and pervasive problem that has broad economic and human ramifications,” said Senator Onorato, noting that the practice is particularly common in the construction industry. “Employers who knowingly misclassify workers deprive their employees of basic labor protections, including access to unemployment insurance and workers’ compensation. Misclassification also hurts honest employers who lose work to companies whose low bids are directly tied to employee misclassification fraud. And this practice ultimately hurts all of New York’s taxpayers in terms of millions of dollars in lost state revenue.”

To combat this problem, Senator Onorato has introduced legislation (S.5847) to enact the “New York State Construction Industry Fair Play Act.” Under this measure, all construction industry workers would be presumed to be employees unless they meet three specific criteria that would lead to their classification as independent contractors. This “ABC test” is used in more than half of the states in the nation where employee misclassification has also diverted millions of dollars into their underground economies. The bill would also provide workers with notice of their classification status, protect them from retaliation for reporting violations, and impose penalties against employers and corporate officers who knowingly allow violations to occur.

Senator Neil D. Breslin (D-Albany), a co-sponsor of the bill, said, “When a worker is knowingly misclassified as an independent contractor, the employee is forced to pay the employer’s share of withholding taxes and other costs. In short, this type of payroll fraud reduces the worker’s take-

home pay while lining the pockets of unscrupulous employers. We need to put an end to it.”

Senator William T. Stachowski (D-Erie County), agreed, adding, “I fully support this legislation which will create a more level playing field for honest employers and for workers who are wrongly being denied adequate wages and necessary labor protections. Neither the state’s workers nor the State of New York can afford to let this harmful practice continue.”

Ed Malloy, the president of the New York State Building and Construction Trades Council, said, “Misclassification of workers is a serious problem that not only affects employees who are denied the wages and benefits they rightfully deserve, but also the taxpayers of New York State who must foot the bill for lost tax revenue and pick up the slack for health care and unemployment costs. It’s time for unscrupulous contractors to play by the rules and be held accountable for their actions. The NYS Building and Construction Trades Council commends the Senate for taking action on this issue.”

Steve McInnis, the political director for the New York City District Council of Carpenters, said, “This is first and foremost a taxpayer fairness bill. For too long, not paying taxes has been an accepted practice in some sectors of construction. It’s time for those New Yorkers to pay their fair share.”

In conclusion, Senator Onorato said, “The issue of employee misclassification needs to be addressed before the problem gets even worse.

A failure to take action is tantamount to condoning tax evasion, encouraging dishonest employers to misclassify even more workers, and looking the other way while workers are being hurt and our state is being cheated of millions of dollars in needed revenue.”

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NOTE: To view the Joint Task Force report in its entirety, visit www.labor.state.ny.us. Click on “Forms and Publications” on left side of home page. From there, click on Annual Reports, and then on 2009: Annual Report of the Joint Enforcement Task Force on Employee Misclassification