

The New York Times

Investigating Mislabeling of Workers

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By STEVEN GREENHOUSE (NYT) Gov. Eliot Spitzer is planning to step up enforcement against thousands of companies that illegally misclassify workers as independent contractors to cheat on taxes and skimp on employee benefits, the state labor commissioner said yesterday.

The commissioner, M. Patricia Smith, said the Spitzer administration was focusing on misclassification because it costs the state a significant amount in unemployment insurance taxes and workers' compensation premiums while denying many workers overtime pay.

"We are developing a plan to address this law-breaking practice, which has been left unchecked for 12 years," Ms. Smith said. She refused to disclose details because the administration has not finished developing the enforcement plan.

In February, researchers from Cornell University issued a report saying that 704,000 of the seven million private-sector workers in New York State were misclassified as independent contractors and that as a result the state was being shortchanged \$175 million in unemployment insurance taxes each year.

Under the state's definition, independent contractors are not employees but are considered to be in business for themselves; employees are those hired to accomplish specific tasks as employers closely supervise their work and decide the hours, pace, place and nature of their labor.

When workers are classified as independent contractors, employers do not have to pay unemployment insurance taxes, workers' compensation premiums or the employer's portion of Social Security and Medicare taxes—typically 7.65 percent of wages. In addition, independent contractors do not have a right to unionize and are exempt from minimum wage and overtime protections, as well as from most discrimination and occupational safety laws. They also do not usually receive the health and pension benefits that other workers receive.

"Misclassification is clearly a major problem in New York State, as it is nationally," said Fred B. Kotler, one of the writers of the Cornell study and associate director of the construction industry program at the Cornell School of Industrial and Labor Relations. "It is a problem not only for the workers who get cheated, but it's a problem for the state's business climate. It craters an unlevel paying field because some companies are taking unfair advantage."

When workers are wrongly classified, the state and federal governments also lose because the employer does not withhold employee income taxes.

After reviewing audits by state agencies, the Cornell researchers – Mr. Hotler, Linda H. Donahue and James Ryan Lamare – concluded that more than 39,500 employers misclassified workers each year.

One of Mr. Spitzer's concerns is that when the state's Labor Department, Workers' Compensation Board or tax department found that a company had misclassified workers, it did not notify other agencies.

Sharing some of the same concerns, Gov. Jon S. Corzine of New Jersey announced a plan last summer to battle misclassification. As part of that effort, the New Jersey Treasury Department and Labor Department adopted a unified definition of an employee and began holding quarterly meetings to coordinate their enforcement.

Each year New Jersey's Labor Department audits about 2 percent of employees, and in 2005 it found more than 26,000 misclassified. The state estimated that this resulted in \$5 million in unpaid taxes.

To minimize the practice, the Cornell study urged New York State's government to conduct high-profile enforcement actions and to clarify its definitions of employee and independent contractor. The report also urged New York to do what a three-year-old Massachusetts law does: create a presumption that every worker is an employee, unless demonstrated otherwise.

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