New Jersey Enters Partnership with USDOL To Fight Worker Misclassification

[**Ford & Harrison LLP**](https://www.lexology.com/contributors/ford-and-harrison-llp) [**USA**](https://www.lexology.com/hub/usa)August 14 2018

***Executive Summary***: Just months after New Jersey Governor Phil Murphy signed Executive Order No. 25 establishing a task force to combat employee misclassification, the NJ Department of Labor and Workforce Development (LWD) entered into a cooperation agreement with the US Department of Labor (USDOL) to work together to fight worker misclassification.

**Background:**Since Governor Murphy came into office earlier this year, he has made no secret that his administration is making strict enforcement of misclassification laws a high priority. On May 3, 2018, Governor Murphy signed Executive Order No. 25, which created a task force charged with numerous responsibilities in connection with combatting employee misclassification. Most recently, on August 10, the LWD announced that it had signed a cooperation agreement with the USDOL, to allow the two agencies to collaborate and work together to ensure employees and workers are properly classified.

The memorandum of cooperation signed by the LWD and USDOL is designed to “amplify the effectiveness of both agencies” by allowing the two agencies to coordinate investigations and share resources, said Mark Watson, administrator for the Northeast Regional Office of the USDOL’s Wage and Hour Division.

Moreover, NJ’s Labor Commissioner, Robert Asaro-Angelo, added that “[o]ne of the Labor Department’s core responsibilities is to safeguard workers from unscrupulous business practices, and to support responsible businesses by making sure everyone plays by the same set of rules,” noting that the issue of misclassification is strikingly more prevalent in industries such as construction, transportation, gig economy and information technology.

This agreement sends a strong message to businesses regarding the enforcement of worker misclassification laws under Governor Murphy’s administration. **Misclassifying workers can be a costly mistake for many businesses. Employers who are found to be non-compliant could be required to pay not only back wages and overtime owed, but in many cases, attorney’s fees and penalties. Employers may also be required to pay benefits contributions or amounts that should have been withheld, plus interest.**

**Employers' Bottom Line:** Employers with operations in New Jersey must be aware that the use of independent contractors is being closely scrutinized, and they must have confidence that these workers are properly classified. In light of the steps already taken by Governor Murphy’s administration, along with this recently announced cooperation agreement, businesses should take proper preventative measures by reviewing their independent contractor agreements, operations, and procedures. If an employer is found to have improperly misclassified an employee as an independent contractor, that employer could be liable for large contributions, back wages, penalties and interest, while simultaneously being forced to change existing business models. Clearly, the best course of action for employers is to identify any problem areas and make necessary adjustments prior to having the LWD and/or USDOL knocking down your door.