

NH sees problem with 'independent contractors'

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By DAVE SOLOMON

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CONCORD - The state is losing millions of dollars in taxes, and workers are exposed to financial and safety risks by companies that illegally treat employees as independent contractors, according to a task force that has been studying the problem for three years.

That task force, composed of six high-level state commissioners, will soon propose legislation that would significantly enhance the ability of the state to enforce the rules on employee classification.

One measure under consideration would enable state agencies to coordinate sanctions, so that liquor licenses or motor vehicle registrations, for example, could be denied to persistent violators of the classification rules. Another proposal would authorize state agencies to issue stop-work orders and create a "debarment list," a blacklist of employers that would be barred from doing business with the state because of continued violations.

The [Joint Agency Task Force on Employee Misclassification Enforcement](#) was created by executive order of Gov. John Lynch in September 2010, and required to report annually.

The task force reports of [2011](#) and [2012](#) made broad recommendations, but did not propose specific legislation. The task force meets again on Monday, with an eye toward its September 2013 report. That report is likely to propose specific language for legislation that would have to be approved by the nine commissioners on the task force.

Then some sympathetic lawmakers would have to be found to introduce the recommendations as bills in the legislative session that starts in January, according to Martin Jenkins, legal counsel for the state Department of Labor.

"This is all out of the executive branch," he said. "Whether it ever gets to the Legislature is a whole other question."

Intense lobbying likely

The stakes are high, and the issue is likely to attract intense lobbying from business and labor interests should any of the task force proposals find their way into the legislative calendar.

Jenkins, who represents the state commissioner of labor on the task force, says after three years of deliberations, it's time for a legislative test of how far the state is willing to go in prosecuting what he described as a serious problem. He said the task force has a consensus around coordination of sanctions and the power to issue stop work orders, and is very likely to propose legislation on those issues.

The debarment list is more controversial, although Deborah Stone, who represents the insurance commissioner on the task force, says the state already has one. "Business entities or state contractors can get onto it by violating certain aspects of labor law," she said, "but I don't think there is currently anyone on it."

Much of the task force initiative involves stepped up use of enforcement tools already available, she said, but others, like the coordination of sanctions, will require changes to state law.

"Something like a stop-work order or coordinated sanctions are extremely effective tools," she said. "They are not tools that anyone wants to actually use to keep a business from operating. We want businesses to be operating in New Hampshire, but we want them to be operating in the right way. If we found there was misclassification going on at a job site, and we can say, 'If you don't fix this you're going to lose your liquor license,' you'd be amazed how they would respond."

Widespread problem

A U.S. Department of Labor study in 2000 found that as many as 30 percent of businesses misclassified employees as independent contractors. A Government Accountability Office (GAO) update in 2009 determined that the number of misclassified workers expanded by 50 percent in the interim.

The recession definitely compounded the problem, according to Stone.

"Part of the reason this has come to the fore has been the financial and economic struggles the country and state have been going through in the last five years," she said. "Businesses were looking for everything they could do to reduce their costs and stay in business, so many more people were ending up out there as independent contractors." The recession also led many companies to end assignments to independent contractors, who then filed unemployment claims, prompting more investigations by the Department of Employment Security.

The problem is particularly severe in the New Hampshire construction trades, according to Mark McKenzie, president of the New Hampshire AFL-CIO.

By defining workers at a site as contractors, builders can avoid paying worker's compensation insurance. That significantly lowers their costs and enables them to make lower bids on projects.

"If they don't get caught, and many times they don't, there can be a significant savings to the violator," he said. "A carpenter's workers compensation rate is at least \$20 per every \$100 of payroll. It is a roll of the dice for an employer who may not get caught. Everyone knows this is going on, so we're happy to see the Department of Labor in New Hampshire is really stepping up their game on this.

"It's so prevalent that the state is losing a significant amount of money, and the good guys who are trying to do the right thing are being penalized in a system that allows this to happen," McKenzie said.

dsolomon@unionleader.com