

STATE OF COLORADO

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B 2018 003



John W. Hickenlooper
Governor

EXECUTIVE ORDER

Creating the Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification in the Construction Industry

Pursuant to the authority vested in the Office of the Governor of the State of Colorado and, in particular, pursuant to Article IV, section 2 of the Colorado Constitution, I, John W. Hickenlooper, Governor of the State of Colorado, hereby issue this Executive Order creating the Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification in the Construction Industry.

I. Background and Purpose

The construction industry is a critical and dynamic component of Colorado's economic well-being, accounting for more than 163,600 payroll jobs in 2017. Job growth in the construction sector of Colorado's economy continues to grow, including an increase of more than 9,900 jobs from April 2017 to April 2018.

Misclassification of employees as independent contractors and other labor law violations by labor brokers at various Colorado construction sites have been discovered and reported to the Colorado Department of Labor and Employment. Such labor law violations disadvantage both law-abiding construction contractors and construction workers in Colorado.

Enforcement activities in this area historically have been divided among various divisions and agencies, reducing the efficiency and effectiveness of enforcement. The task force will make recommendations to strengthen coordination, information sharing, communication, enforcement, and compliance monitoring by government agencies, construction contractors, and workers, and publicly communicate Colorado's commitment to continued economic growth of our vibrant and dynamic construction industry.

II. Mission and Scope

This Executive Order hereby creates the Joint Enforcement Task Force on Payroll Fraud and Employee Misclassification in the Construction Industry ("Task Force").

The Task Force shall, at its discretion and capacity, coordinate with relevant agencies to develop recommendations to strengthen the investigation and enforcement of employee misclassification, other labor law violations, and payroll fraud in the construction industry.

In fulfilling this mission, the Task Force shall:

- A. Assess current practices and coordinate with relevant agencies to improve strategies for systematically investigating employee misclassification within the construction industry. Such activities include but are not limited to:
 - i. Examining the efficacy of existing methods, both within Colorado and in other jurisdictions, of preventing, investigating, and taking enforcement action against employee misclassification violations;
 - ii. Sharing information related to suspected employee misclassification violations, in a timely manner and to the maximum extent permitted by law;
 - iii. Facilitating the filing of complaints and identification of potential violators and sharing such information as provided in the preceding section; and
 - iv. Recommending protocols through which relevant agencies investigating employee misclassification matters can, under their own statutory or administrative schemes, refer matters to other agencies for assessment of potential liability.

- B. Collaborate with business, labor, government agencies, and community groups interested in reducing employee misclassification in the construction industry by:
 - i. Seeking ways to prevent employee misclassifications, such as through the dissemination of educational materials regarding the legal differences between independent contractors and employees;
 - ii. Enhancing mechanisms for identifying and reporting employee misclassification where it does occur;
 - iii. Soliciting the cooperation and participation of the Attorney General, the Secretary of State, local district attorneys, other relevant agencies, and other appropriate stakeholders, and establishing procedures for referring cases to prosecuting authorities as appropriate;
 - iv. Working cooperatively with federal, state, and local social services agencies to provide assistance to vulnerable populations that have been exploited by employee misclassification, including but not limited to immigrant workers; and
 - v. Increasing public awareness of the illegal nature of and harms inflicted by purposeful and intentional employee misclassification.

Beginning November 30, 2018, the Task Force shall issue a report to the Governor no later than November 30 of each year, which shall:

- A. Describe the record and accomplishments of the Task Force, to the extent permitted by law, including the amounts of wages, premiums, taxes, and other payments or penalties collected with the assistance of Task Force activities, as well as the number of employers cited for violations related to misclassification and the approximate number of employees affected;
- B. Identify any administrative or legal barriers impeding the more effective implementation of the recommendations of the Task Force, including any barriers to information sharing or joint action;
- C. Propose, after consultation with representatives of business and organized labor and members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to:
 - i. Reduce or eliminate any barriers to the Task Force's operations;
 - ii. Prevent employee misclassification from occurring;
 - iii. Investigate potential violations of the laws governing employee misclassification;
 - iv. Improve enforcement and prevention where such violations are found to have occurred; and
 - v. Pool, focus, and target investigative and enforcement resources;
- D. Identify successful mechanisms for preventing employee misclassification, thereby reducing the need for greater enforcement.

Relevant agencies may share relevant data and research with the Task Force to the extent permitted by law. The Task Force may consult with outside experts as appropriate.

III. Membership

- A. The Task Force shall consist of 7 members appointed by the Governor. Terms shall be for the duration of this Executive Order.
- B. The Task Force shall consist of the following members:
 - i. The Executive Director of the Colorado Department of Labor and Employment, or his or her designee, who shall serve as the Chair of the Task Force;
 - ii. The Executive Director of the Colorado Department of Revenue, or his or her designee;

- iii. The Executive Director of the Colorado Department of Regulatory Agencies, or his or her designee;
- iv. A representative of the Southwest Regional Council of Carpenters;
- v. A representative of the Associated General Contractors of Colorado;
- vi. A representative of the Colorado Department of Personnel and Administration;
- vii. One representative from the Office of the Governor.

Any member of the Task Force may designate a representative to act on his or her behalf.

IV. Duration

This Executive Order shall remain in place until November 30, 2020, or until such time that it is either terminated or extended beyond that date by further Executive Order of the Governor.



GIVEN under my hand and the
Executive Seal of the State of
Colorado, this fifth day
of June, 2018.

A handwritten signature in black ink, reading "John W. Hickenlooper".

John W. Hickenlooper
Governor