

To: Unemployment Insurance Advisory Council
From: Andy Rubsam
Cc: Janell Knutson
Date: September 17, 2015
Re: Other States' Worker Misclassification Penalties

An individual who performs services for pay is an employee, not an independent contractor, for the purposes of unemployment insurance law.¹ An employing unit may be fined \$25,000 as a criminal penalty for willfully providing false information to the department for the purpose of misclassifying employees as independent contractors imposed by a court.² Currently, there is no administrative penalty for willful misclassification of workers as independent contractors in Wisconsin unemployment insurance law. The Unemployment Insurance Advisory Council has requested information regarding other states' civil penalties for willful misclassification of workers.

Illinois

Illinois enacted one of the strictest misclassification laws in the United States: the Employee Classification Act.³ The Act provides for civil penalties of \$1,000 for each day that an employer misclassifies each worker as an independent contractor. The penalties increase to \$2,000 per employee per day for a repeat violation. For example, if the Illinois Department of Labor conducts a first audit of an employer and finds that the employer misclassified 5 employees and misclassified each of those employees for 10 days, there would be a total of 50 violations and the penalty would be \$50,000.

¹ Wis. Stat. § 108.02(12).

² Wis. Stat. § 108.24(2m).

³ 820 ILCS 185/1-999.

California

California imposes a civil penalty of \$5,000 to \$15,000 for “willful misclassification of an individual as an independent contractor.”⁴ If the employer engages in a “pattern or practice” of willfully misclassifying workers as independent contractors, the civil penalty is \$10,000 to \$25,000.⁵

Maryland

Maryland assesses civil penalties up to \$5,000 per misclassified worker for employers who “knowingly” violate the Maryland Workplace Fraud Act.⁶ The penalty may increase to \$10,000 for a second violation. Maryland lists the following factors to be considered in determining whether the employer “knowingly” misclassified a worker as an independent contractor: previous violations of a misclassification law, refusal or failure to produce records, refusal or failure to cooperate in an investigation, evidence that an employer classifies workers who perform the same tasks differently and any evidence that the employer acted with “reckless disregard for whether or not the worker is misclassified.”⁷

Rhode Island

Rhode Island’s wage and hour law provides for civil penalties of \$500 to \$3,000 for misclassifying workers as independent contractors and up to \$5,000 for a second offense of misclassifying workers.⁸

⁴ Cal. Lab. Code § 226.8(b).

⁵ Cal. Lab. Code § 226.8(c).

⁶ Md. Code Ann., Lab. & Empl. § 9-402.1 (d).

⁷ COMAR 09.12.40.04.

⁸ R.I. Gen. Laws Ann. § 28-14-19.1(b).