



Model Misclassification Policies

Presentation to Minnesota Task Force on
Misclassification
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Model Policies Overview

- **Cross-agency task force**
- **Strong penalties**
- **Liability up the chain**
- **Notice requirements**
- **Funding for state enforcement**
- **Clear test with employment presumption**
- **Regulating technology used to control workers**

Cross-agency task force

- Require cross-agency coordination and information-sharing
- Provide authority for task force to perform
 - Research
 - Investigations and enforcement
 - Audits
 - Communications/outreach
- Require task force to
 - Target high-violation industries for investigations
 - Share data among agencies and make referrals
 - Solicit input from affected workers, business and community
 - Engage in public outreach
 - Publish regular reports
 - Engage in interstate and federal collaboration

Strong standalone penalties

- Damages greater than restitution, plus other fees
 - Maryland Workplace Fraud Act – MD Code Labor & Employment § 3-911
- Civil penalties
 - Massachusetts – MA ST 149 § 27C
 - DC Workplace Fraud Act – DC Code § 32-1331.07 – per employee
- Stop work orders
 - DC Workplace Fraud Act – DC Code § 32-1331.06
- Debarment from public contracts
 - Massachusetts – MA ST 149 § 27C

Liability up the chain

- Client employer liability
 - Cal. Labor Code § 2810.3
- Client company liability in temp staffing relationships
 - New Jersey – N.J.S.A. 34:8D-7
 - Illinois – IL ST CH 820 § 175/85
- Contractor responsibility for subcontractor compliance in public contracts & community benefit agreements
 - Connecticut – C.G.S.A. § 31-53d

Notice requirements

- Require employers to post notice at workplace
 - New Jersey – N.J.S.A. § 34:1A-1.19
- Require hiring entities to provide notice to independent contractors at time of hiring
 - Maryland Workplace Fraud Act, MD Code, Labor & Employment § 3-914
- Enlist government agencies in “know your rights”
 - New Jersey - N.J.S.A. § 34:1A-1.19
- Develop multilingual outreach program, engage with worker representative organizations
 - New Jersey’s temp worker law – N.J.S.A. . § 34:8D-3
- Partner with impacted workers, businesses and community for input
 - Seattle’s app-based worker minimum pay ordinance – SMC 8.37

Funding for state enforcement

- Create civil penalties fund for administration and enforcement
 - DC Workplace Fraud Act, D.C. Code § 32-1331.01
- Include appropriation for enforcement in labor agency budget
 - Maryland Workplace Fraud Act, MD Code, Labor & Employment § 3-919

Clear test with employment presumption

- ABC test
 - Wage and hour laws, including:
 - Massachusetts
 - New Jersey
 - California
 - Connecticut
 - DC (construction only)
 - Maryland (landscaping and construction only)
 - NY (construction only)
 - 21 states' unemployment insurance laws
- Other employment presumption tests
 - Virginia
- Independent contractor certification requirement
 - Montana

Regulating technology used to control workers

- Require transparency about
 - how worker and consumer data is collected and used
 - How technology is used to set and control terms and conditions of work (assignments, pay, take-rate, expenses)
- Require regular disclosure to government agency on
 - data collected from workers and customers
 - technology that surveils and controls workers
- Require human oversight of technology that impacts workers' lives

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