

# **WORKER CLASSIFICATION**

## **BACKGROUND**

An employer is required by law to classify its workers on construction projects as employees or independent contractors. It is becoming increasingly prevalent that companies are not classifying properly. By not classifying properly, a company does not pay its fair share of taxes.

## **PROBLEM**

Employers who misclassify their workers have a competitive advantage in bidding for jobs and divert work from employers who do pay taxes, overtime and workers' compensation premiums for their workers. Because the penalties for not classifying properly are limited to payment of back taxes owed, plus nominal interest and tiny penalty, the consequences for violating the law are not strong enough to deter employers from not classifying properly. Additionally, the current law is difficult to enforce as it has many subjective tests to determine whether a worker is an employee or independent contractor. Thus, the Texas Workforce Commission has a tough task when trying to make a determination whether construction employers are being good actors.

## **SOLUTION**

The laws should be amended to set forth penalties for improperly classifying workers which are strong enough to deter employers from violating the law. Any change should allow for those who use independent contractors to continue doing so with minimal, if any, disruption, yet give them better assurance that they will not be subject to unemployment taxation on non-employees.

***Detailed information on reverse***

## **Worker Classification – Detailed Information**

**Background:** Misclassification of employees as independent contractors, also known as workplace fraud, is widespread in the construction industry in Texas. In one major metropolitan area of the state, it is estimated that as a result of construction workers being misclassified by their employers as independent contractors an estimated \$9 million in revenue in that area is lost annually as a result of unpaid state unemployment insurance taxes and federal taxes.

**Problem:** Employers who misclassify their employees have a competitive advantage in bidding for jobs and divert work from employers who do pay taxes, overtime and workers' compensation premiums for their employees. In addition, the consequences for those employers violating the law are not strong enough to deter them from continuing their practice of misclassifying their employees.

**Solution:** Legislation should be enacted that will set forth penalties severe enough to carry significant financial consequences for bad actors. In making the distinction between an employee and independent contractor, the law should continue to allow for those who use independent contractors to continue doing so and give them better assurance that they will not be subject to unemployment taxation on non-employees