

GAME ON: Louisiana Department of Revenue and Other State Agencies Look to Even the Score on Employee Misclassification

Article By:

Andre Burvant

The Louisiana Department of Revenue ([DOR](#)) has joined forces with other Louisiana agencies to crackdown on employee misclassification and failure to withhold payroll taxes. The [GAME ON](#) (Government Against Misclassified Employees Operational Network) [Task Force](#) is an interagency network made up of members of the Louisiana Workforce Commission's ([LWC](#)) [Unemployment Insurance](#) and [Office of Workers' Compensation](#) divisions and the DOR. The task force also collaborates with the IRS and the U.S. Department of Labor's ([DOL](#)) [Wage and Hour Division](#).

Most employee misclassifications involve employers improperly labeling employees as independent contractors. In an October 25, 2017 press release, the LWC touted that it has [led the nation in audit-based discoveries of misclassified employees over the last several years and plans to ramp up its efforts in 2018](#).

After the task force determines that an employer has misclassified employees, the [DOR](#) can readily determine if the employees paid income tax on their wages. If not, the [DOR](#) can seek to collect the tax from the employer, whose failure to withhold payroll taxes in accordance with the law renders the employer responsible for those taxes. The employer's liability, however, is not limited to back taxes. The [DOR](#) can seek to collect interest and both delinquent payment penalties and delinquent withholding penalties.

The DOR has all of its tax collection remedies at its disposal, including filing lawsuits. On January 30, 2018, the DOR [issued a press release serving notice to employers that the DOR recently filed three lawsuits against businesses it accuses of evading taxes by not withholding and remitting payroll taxes from their employees' earnings](#). The lawsuits seek almost \$250,000 in taxes, penalties and interest. The [DOR](#) says several other audits are currently in progress.

The GAME ON Task Force also has some non-tax related focuses. Each member of the GAME ON Task Force has different interests in the misclassification of workers as independent contractors. For example, the LWC wants to ensure that the state's Unemployment Insurance Trust Fund is being properly funded. Companies do not pay into the Trust Fund for independent contractors. The LWC's Office of Workers' Compensation governs whether a company is maintaining adequate workers' compensation coverage for its employees, and if a company is classifying a worker as an

independent contractor, it is likely not maintaining adequate coverage. Finally, the DOL has an interest in ensuring that workers are being paid minimum wage and overtime, which is often not considered when using independent contractors.

This continued focus by the GAME ON Task Force is important to any company that regularly uses independent contractors. All companies should review their use of independent contractors to ensure they are not being misclassified. As an example, in making its determination as to whether an individual is actually an employee, the LWC considers whether the individual is subject to the direction and control of the company, whether the services of the individual are within the usual course of business of the company and are performed at the company's usual place of business, and whether the individual has his/her own established business independent of the company's business.

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