Worker Misclassification

Misclassification occurs when an employer improperly classifies a worker as an independent contractor.

Misclassification of workers hurts Virginia’s families, constitutes payroll fraud and denies Virginia workers basic legal protections such as workers’ compensation coverage, family and medical leave and unemployment insurance benefits.

Employers that misclassify workers can improperly avoid payroll costs by up to 40%. Misclassification is a destructive practice that hurts honest employers by allowing unscrupulous employers to undercut the bids of those contractors who play by the rules.

New Policy

The Virginia Occupational Safety and Health (VOSH) Program conducts thousands of occupational safety and health workplace inspections on a yearly basis, and starting July 1, 2015, will implement the following policy where it has reasonable cause to believe that worker misclassification has occurred in a VOSH case:

- In the event that VOSH citations and penalties are proposed for the employer, penalty reductions for size and good faith will NOT be afforded to the employer.
- In construction multi-employer worksite situations, each contractor (e.g., general contractors, prime subcontractors and lower tier subcontractors) will be asked to provide proof of their Department of Professional and Occupational Regulation (DPOR) contractor’s license AND for proof of the DPOR license for any of its’ subcontractors.
- When it is determined that a construction employer has contracted with an unlicensed subcontractor, VOSH will make a written referral to DPOR for the contractor and its unlicensed subcontractor (DPOR sanctions for contracting with unlicensed subcontractors may include fines, probationary terms, suspension or license revocation).
- In cases where the contract value for the specific subcontractor’s job is less than $1,000.00, VOSH will make a written referral to the Virginia Employment Commission (VEC) and/or the Virginia Workers’ Compensation Commission (VWCC) for potential audits of the employer’s employment practices. Referrals may be made for contract values over $1,000.00 as well.

A complete copy of the new policy, education materials and outreach materials can be located on our website at: www.doli.virginia.gov

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