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N E W S R E L E A S E

Task Force Says “GAME ON” in Fight to Stop Misclassifying Workers

BATON ROUGE – It’s a hidden crime with thousands of unsuspecting accomplices, a multi-million dollar payroll, and an unfair business advantage to the bad guys. But a team of state and federal agencies are working together to tell companies that if they misclassify workers, then it is GAME ON.

GAME ON is the acronym for Government Against Misclassified Employees Operational Network, a unique task force found only in Louisiana. Partnering together are the Louisiana Workforce Commission (LWC)’s Unemployment Insurance and Office of Workers’ Compensation divisions and the Louisiana Department of Revenue, with cooperative agreements with the Internal Revenue Service and the U.S. Department of Labor’s Wage & Hour Division.

“We are putting companies on notice that misclassifying workers won’t be tolerated in Louisiana,” said LWC Executive Director Ava Dejoie. “The practice isn’t fair to the unsuspecting workers who are cheated out of critical benefits and protections, and it’s not fair to the thousands of businesses who ‘play by the rules’ but are undercut by companies that intentionally trim labor costs by misclassifying.”

Misclassification refers to a worker who by law is an employee, but is incorrectly classified as something other than an employee. Most misclassifications usually involve workers labeled as independent contractors.

The GAME ON task force has focused efforts on the industries historically known to use independent contractors to a large degree, namely construction, health care, hospitality, personal services and staffing companies.

When a worker is classified as an independent contractor, a company does not have to provide benefits and protections as outlined by law, such as minimum wage, overtime compensation, family and medical leave, unemployment insurance and safe workplaces. It has been estimated that companies that misclassify workers as independent contractors shave as much as 40 percent off their labor costs.

“Labor brokers,” a new staffing practice in Louisiana often seen in the construction and health care industries, is another way employers skirt the law, said Dejoie. For example, contractors will work with labor brokers to get temporary manpower for short-term jobs. The workers technically were recruited and hired by the labor broker, but work for the

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contractor. The contractor gets the labor he needs without having to pay unemployment taxes, Social Security, FICA, workers' comp or overtime pay, among other benefits.

However, "contractors should take caution and ensure that their (labor broker) subcontractors are properly licensed, insured, and are paying the appropriate payroll taxes on their crews," said Dejoie. "Failure of the subcontractor to comply with state and federal laws may result in the general contractor becoming liable for such payments."

While the task force effort only recently got its GAME ON moniker, the agencies have been working together since 2013, shortly after the Louisiana Legislature passed the Fair Play Act. For the last several years, LWC's skilled tax auditors – some with more than 40 years' experience – have led the nation in audit-based discoveries of misclassified workers. In 2015, using shared information from the task force agencies and tips from a fraud hotline, LWC's tax auditors discovered nearly 20,000 cases of misclassified workers, representing \$101 million in unreported wages. That effort resulted in the LWC's Audit Program being honored by the U.S. Department of Labor as the most effective audit program in the country.

"We are ramping up our efforts even more in 2018," said Dejoie. The LWC is in the process of implementing audit software that features built-in analytics to help identify suspect companies. The phased-in program will also streamline the audit process, allowing LWC's auditors to investigate more companies in less time.

In addition to having to pay taxes on unreported wages, companies with identified "willful" offenses of misclassified workers face financial penalties of up to \$1,000 per offense, with each misclassified employee considered a separate offense. Incidences of multiple offenses can also result in imprisonment, and offending employers are barred from receiving state or government contracts.

GAME ON agencies audit records as far back as four years, explained Dejoie. "If we find questionable hiring practices in a company one year, we will expand our audit to previous years as well," she said.

Each GAME ON agency has a different stake in regard to misclassified workers. In LWC's case, it looks at the impact to the state's Unemployment Insurance Trust Fund, which covers unemployment benefits for eligible workers who lose their jobs through no fault of their own. Since employers pay into the trust fund based on the number of their employees, companies that claim independent contractors do not pay into the trust fund, and those workers may be ineligible for unemployment benefits. The LWC's Office of Workers' Compensation looks at whether a company is maintaining adequate workers' compensation coverage for employees, another factor skewed by use of independent contractors. Workers injured on the job are denied lawful benefits, such as a portion of their wages and the costs of medical treatment, when classified as an independent contractor rather than as an employee. Additionally, the costs of these lawful benefits get shifted to other social safety nets such as Medicare and Social Security when it is the employer's obligation, through workers' compensation insurance, to pay these benefits.

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Dejoie credits GAME ON's success to the high degree of collaboration and "constant communication" among task force members. "We exchange information with each other and leverage the tips we receive through our fraud reporting hotline," said Dejoie.

To report suspected cases of misclassified workers to the LWC, call 1-800-201-3362, or use the LWC's online Report Fraud form on its website, www.laworks.net/fraudmenu.asp.

About The Louisiana Workforce Commission

The Louisiana Workforce Commission is an agency of state government that administers programs designed to enhance workforce growth and provide family-sustaining jobs for Louisiana residents. The commission monitors employment, administers unemployment compensation and tax funds, provides training resources for employers and employees and oversees worker compensation benefits. The agency also gathers and supplies information on the labor market and occupational sectors in Louisiana.

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