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**FROM: Girard R. Visconti, Esq.**  
**DATE: August 7, 2018**  
**RE: Misclassification of Employees**

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The Rhode Island Department of Labor and Training is pursuing employers for "misclassification of workers." (Enclosed please find Misclassification Statute §28-14-19 .1 ). Specifically, as to employers who hire persons as an "independent contractor," when in fact that person or persons are in fact employees.

The question of whether or not a person is an independent contractor or an employee depends upon depends upon many factors such as whether or not, ( 1) the person works a full week for the employer; (2) is managed by the employer and under the control of the employer; (3) utilizes the tools and equipment of the employer; and (4) in fact is deemed to be an employee versus an independent contractor.

Independent contractors are required to register with the Rhode Island Department of Training pursuant to R.I.G.L. §28-29-17 .1, a copy of which is enclosed. Therefore, the employer should review the retention of an independent contractor to determine whether or not the statute is being violated.

**GRV**

*Enclosures*

# **TITLE 28**

## **Labor and Labor Relations**

### **CHAPTER 28-14**

#### **Payment of Wages**

#### **SECTION 28-14-19.1**

##### **§ 28-14-19.1. Misclassification of employees.**

(a) The misclassification of a worker whether performing work as a natural person, business, corporation, or entity of any kind, as an independent contractor when the worker should be considered and paid as an employee shall be considered a violation of this chapter.

(b) In addition to any other relief to which any department or an aggrieved party may be entitled for such a violation, the employer shall be liable for a civil penalty in an amount not less than one thousand five hundred dollars (\$1,500) and not greater than three thousand dollars (\$3,000) for each misclassified employee for a first offense and up to five thousand dollars (\$5,000) for each misclassified employee for any subsequent offense, which shall be shared equally between the department and the aggrieved party.

(c) In determining the amount of any penalty imposed under this section, the director or his or her designee shall consider the size of the employer's business; the good faith of the employer; the gravity of the violation; the history of previous violations; and whether or not the violation was an innocent mistake or willful.

(d) A violation of this section may be adjudicated under § 28-14-19 and consolidated with any labor standards violation or under §§ 37-13-14.1 and 37-13-15 and consolidated with any prevailing wage violation.

(e) A violation of this section may be brought or adjudicated by any division of the department of labor and training.

(f) The department shall notify the contractor's registration board and the tax administrator of any violation of this section.

History of Section.

(P.L. 2012, ch. 306, § 4; P.L. 2012, ch. 344, § 4; P.L. 2017, ch. 302, art. 13, § 7.)

# TITLE 28

## Labor and Labor Relations

### CHAPTER 28-29

#### Workers' Compensation – General Provisions

#### SECTION 28-29-17.1

##### **§ 28-29-17.1. Notice of designation as independent contractor.**

(a) A person will not be considered an "independent contractor" unless that person files a notice of designation with the director, consistent with rules and regulations established by the director, in writing, on a form provided by the director, that the person is an "independent contractor." The filing of the notice of designation shall be a presumption of "independent contractor" status but shall not preclude a finding of independent contractor status by the court when the notice is not filed with the director. That designation shall continue in force and effect unless the person withdraws that designation by filing a notice with the director, in writing, on a form provided by the director, that the person is no longer an "independent contractor." Any designation or withdrawal of designation form shall be deemed public information and the director shall furnish copies or make available electronically the forms and designations, upon written request, to any employer or insurer or its authorized representative.

(b) The workers' compensation court may, upon petition of an employee, the dependents of a deceased employee or any other party in interest at any time, vacate any "notice of designation" if the "notice of designation" has been improperly procured.

(c) The provisions of subsections (a) and (b) of this section shall only apply to injuries occurring on and after January 1, 2001.

History of Section.

(P.L. 2000, ch. 491, § 9.)