

 **Search All Issues**

 **Contents**

BNA, Inc.

Construction Labor

REPORT

Volume 52 Number 2568
Wednesday, April 12, 2006
ISSN 1523-5688

Page 238

State News

New Jersey

Two New Jersey Agencies to Crack Down On Independent Contractor Misclassification

PHILADELPHIA--At the governor's request, New Jersey officials have launched a two-prong attack on employers that pay workers under the table or misclassify them as independent contractors, acting New Jersey Labor Commissioner David J. Socolow told BNA April 10.

Socolow said Gov. Jon S. Corzine (D) has directed Treasury and Labor Department officials to leverage their enforcement powers by working together to identify and penalize employers that avoid making unemployment and disability insurance and gross income tax withholding payments to the state for all their employees.

A recent state Labor Department audit of about 2.5 percent of New Jersey's 260,000 employers found 26,000 individuals were misclassified as independent contractors by their employers in 2005, resulting in \$15 million in underpayments to New Jersey's unemployment and disability insurance funds, Socolow said.

He said gross income taxes that should have been withheld by those employers and the penalties that apply for failure to withhold were pegged conservatively at \$5 million to \$6 million.

Misclassification of workers as independent contractors is most common in the construction industry, industries such as landscaping that rely on day labor, and office settings, the commissioner said.

In an April 4 memo, the governor told Treasury and Labor Department officials that misapplying the independent contractor label "causes serious negative repercussions to workers and our state's economy."


Workers who are misclassified lose because they have no unemployment or disability insurance or workers' compensation coverage, Social Security wage credits, or employee health or pension benefits. Employers that misclassify workers as independent contractors realize an unfair competitive advantage when they fail to pay wages and related payroll taxes properly and do not carry workers' compensation insurance, the governor said in the memo.

"A truly business-friendly climate ensures that every employer who operates a business in the state is competing on a level playing field," Corzine said. "The current inequity in worker classifications has the potential to seriously undermine our state's economy."

New Jersey law establishes a three-factor test to determine if a person is an independent contractor, based on who controls and directs the performance of his or her service, whether the service is within the employer's usual course of business, and whether the worker is running a truly independent enterprise.

Under the new enforcement initiative, the results of Labor Department audits of payroll records will be forwarded to the state Taxation Division when the audits show workers have been misclassified as independent contractors. For tax auditors, such a finding will constitute a strong tip that the employer is not honest when filling out tax information on workers, Socolow said.

State officials hope the crackdown will send employers a strong signal that "if you're caught, you're going to get hit twice, both by the Labor Department and by the tax man," Socolow said.

He said the enforcement initiative will be fine-tuned based on ongoing assessments of what happens to a file when it goes from his agency to the Taxation Division, with a first report due to the governor in 30 days. 

By Lorraine McCarthy

Contact customer relations at: customercare@bna.com or 1-800-372-1033

ISSN 1523-5688

[Copyright](#) © 2006, The Bureau of National Affairs, Inc.

[Copyright FAQs](#) | [Internet Privacy Policy](#) | [BNA Accessibility Statement](#) | [License](#)

Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy,

<http://www.bna.com/corp/index.html#V>

