Employee Misclassification
The practice of labeling workers as independent contractors rather than employees.

- In United States businesses able to avoid 30% - 40% of labor costs

- Millions of workers in the United States misclassified
IMPACT ON WORKER

Denied access to:

- Minimum wage
- Overtime compensation
- Family and medical leave
- Unemployment insurance
- Workers’ comp coverage
IMPACT ON BUSINESSES

UNFAIR

competitive edge
IMPACT ON GOVERNMENT

Substantial loss of revenue:

• Federal and State income tax
• Social Security contributions
• Unemployment Insurance trust fund
• Workers’ Compensation funds
LWC Field Audit Unit

Purpose:
- LWC Field Audit Unit ensures compliance with the Louisiana Employment Security Law Louisiana Revised Statutes Title 23 Chapter 11.

Legal Authority:
- LA Revised Statutes Title 23, Chapter 11 Section 1660 (A)(B). This Law gives us the legal right to audit employers records.

Method:
- Conduct compliance reviews; follow up on previous audit offenses; assist and/or refer SUTA’s for resolution; keep abreast of laws affecting industries.
Field Audit OVERVIEW

- Field Audit is one component of the LWC UI Tax Operations
- 11 UI Tax Agents 64 Louisiana Parishes
- In 2015, The Louisiana Workforce Commission’s UI Audit Program was ranked #1 in 2015 - in the nation for audit program effectiveness. The audit team discovered nearly 20,000 misclassified workers and $116 million in unreported wages.
LWC Field Audit Unit is required through Federal mandates to conduct audits.

All audits are assigned by management. If FA receives a tip/referral, we are required to investigate.

All documents must be made available for inspection and copying Pursuant to Louisiana State Law, R.S. 23:1660 (A), 1661 and 1662.

All payments are evaluated using LA R.S. 23: 1472 (12) (E) III, Three Fold Test For Independent Contractors.

- **IT IS AGAINST THE LAW TO CLASSIFY EMPLOYEES (OR WORKERS WHO SHOULD BE TREATED AS EMPLOYEES) AS INDEPENDENT CONTRACTORS.**

- **IT IS AGAINST THE LAW TO REFUSE TO OPEN YOUR BOOKS FOR AUDIT INSPECTION**
KNOW THE LAW

- YOU MAY BE PENALIZED $5,000 FOR NONCOMPLIANCE IF YOU REFUSED TO ALLOW THE INSPECTION OF YOUR RECORDS. (LA R.S. 23:1660 (C), failure to comply with this audit request may result in an Administrative Penalty up to $5,000.)
G.A.M.E. O.N.

GOVERNMENT AGAINST MISCLASSIFYING EMPLOYEES OPERATIONAL NETWORK
COLLABORATIVE EFFORT

- Louisiana Workforce Commission
  - Office of Unemployment Insurance
  - Office of Workers’ Compensation
  - Minor Labor
  - OSHA

- Louisiana Department of Revenue

- USDOL Wage and Hour Division

- Internal Revenue Service

- Louisiana State Police
G.A.M.E. O.N.

STANDARD OPERATING PROCEDURES

- Audit Selection
- Pre-Investigation
- Investigation
- Post Investigation
LWC MISCLASSIFICATION PENALTIES
LA Employment Security Law  R.S. 23:1711(G)

• Written warning

• Continue Misclassifying:
  ▪ 2\textsuperscript{nd} offense $250 per misclassified worker
  ▪ 3\textsuperscript{rd} offense $500 per misclassified worker
  ▪ 2 or more offenses:
    ▪ Up to $1,000
    ▪ Up to 90 days in prison
    ▪ Each misclassified employee is considered a separate offense
LWC WORKERS’ COMP PENALTIES
LA Workers Compensation Law R.S. 23:1169-1172

• Civil Penalties
  ▪ 1st offense $250 per employee up to $10,000
  ▪ Subsequent offenses $500 per employee and may include injunctive actions to cease business operations

• Criminal Penalties
  ▪ 1st offense $250 per day for willful employer misconduct in not providing security, or up to 10 years imprisonment or both
2019 EFFECTIVE AUDIT MEASURE

**Factor 1:** Audit 1% of all contributory employers
- Required to pass: 1%
- LWC performance: 0.95%
- 993 audits

**Factor 2:** Change 2% of total wages audited (rolling amt)
- Required to pass: 2%
- LWC performance: 8.30%
- $15,380,554

**Factor 3:** Audit 1% of total wages reported
- Required to pass: 1%
- LWC performance: 1%
- $810,000,000
- 815 audits

**Factor 4:** Detect average of 1 misclassified worker per audit
- Required to pass: 1%
- LWC performance: 3,768
- $4.01 per audit
CONTACT INFORMATION

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QUESTIONS