



Employee or Independent Contractor?

Understanding Maryland's Workplace Fraud Act

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What is the Workplace Fraud Act?

- The Workplace Fraud Act of 2009 (amended 2012) applies to the construction and landscaping industries.
- Under the WFA, workers in construction and landscaping are presumed to be employees unless the “employer” can establish that the workers are independent contractors or “exempt persons.”

Overcoming the Presumption

- Four ways to overcome the presumption of employment:
 1. Exempt Person
 2. Independent Contractor
 3. Contractual Relationship between two businesses
 4. Documented Independent Contractor

1. Exempt Persons

- Sole proprietor operating an independent business;
- Employs no individuals other than a parent, child, or spouse;
- Free from direction and control;
- Furnishes tools & equipment;
- Performs services for others at his/her discretion.

2. Contractual Relationship

- Two businesses entities may enter into a contractual relationship without establishing an employer/employee relationship

3. Independent Contractor

- A. Performs work free from direction and control;
- B. Who is engaged in a trade or business of the same nature as the work performed, and;
- C. Whose work is outside the usual course of business of the person for whom the work is performed; OR, whose work is performed outside any place of business of the person for whom it is performed.

4. Documented IC

- Written Contract
- Affidavit
- Certificate of Status
- All required business and/or occupational licenses
- Notice to Independent Contractors and Exempt Persons must be provided in both English and Spanish



Why am I being investigated?

- Investigations may be conducted:
 - On the Commissioner's own initiative;
 - On receipt of a written complaint;
 - On referral from another unit of State government.

Required Records

- An employer must keep the following records:
 - Name, address, occupation and classification;
 - The rate of pay of each employee or method of payment;
 - The amount that paid each pay period;
 - The hours worked each day and each workweek;
 - Evidence that each individual is an exempt person or independent contractor; and
 - Evidence that each independent contractor or exempt person, was provided written notice of his or her status.

Misclassification

- If Misclassification is found the Commissioner may issue a citation to the employer.
 - 15 days from the date of the citation to file a request for a hearing
 - If no hearing is requested, the citation becomes a final order
 - If a hearing is requested, the decision of the judge constitutes a final order
 - 45 days from the date of the final order to come into compliance

Penalties

- First Offense (Non-knowing violation) –
 - **\$1,000 per misclassified worker**
- Second Offense (Knowing violation) –
 - **\$5,000 per misclassified worker**
- Third Offense (Second Knowing violation) –
 - **\$10,000 per misclassified worker**
- Fourth and Subsequent Offenses (Third Knowing violation) -
 - **\$20,000 per misclassified worker**



Compliance

- Employer may be required to pay restitution to misclassified workers.
- Employer must come into compliance with relevant labor laws within 45 days.
- No civil penalty assessed for timely compliance in the case of a non-knowing violation.



Discriminatory Action by Employer

- An employer may not take discriminatory action against a worker who files a complaint.
- An employee has 180 days to file a complaint with the Commissioner in the event of discrimination.
- The Commissioner may file a complaint against the employer in circuit court.



Groundless or Malicious Complaints and Bad Faith Actions

- Groundless or malicious complaints or actions brought in bad faith are prohibited.
- The Commissioner shall investigate any allegations of bad faith, groundless complaints or malicious intent.
- Administrative penalty of up to \$1,000.
- Attorneys' fees.