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To: Rep. Michael Marcotte, Chair, Commerce and Economic Development Committee
Rep. Emilie Kornheiser, Chair, Ways and Means Committee
Sen. Ann Cummings, Chair, Finance Committee
Sen. Kesha Ram Hinsdale, Chair Economic Development, Housing, and General Affairs Committee

From: Charity Clark, Attorney General
Christopher J. Curtis, Director, Consumer Assistance Program; Assistant Attorney General; Chair, Misclassification Task Force

cc: Michael Harrington, Commissioner, Department of Labor

Date: January 15, 2024

Re: *Misclassification Report*

Pursuant to the requirements of Act 85 (of 2020), the Office of the Attorney General is pleased to announce results of its cooperation with the Vermont Department of Labor in investigating employers that may have misclassified employees and failed to either pay contributions to Vermont's unemployment insurance trust fund, failed to maintain workers' compensation insurance for their employees, or both. As a result of these investigations, the Attorney General's Office and the Department of Labor are working to ensure that all employers are complying with Vermont law.

Activity; Reporting

In the 12 months reviewed (Q4 2022 - Q3 2023), the Department of Labor's Worker's Compensation Division received 119 complaints of businesses operating without proper insurance coverage that were subsequently found liable. Additionally, the Division received 79 referrals from the public, which were subsequently opened for investigation. Of those newly opened complaints and referrals, five resulted in citations totaling \$47,600. For the relevant period, a total of 13 citations were issued subsequent to investigation, resulting in penalties assessed totaling \$200,300. Over the same period, the Unemployment Insurance (UI) Division completed 206 audits and 519 investigations. Of all audits and investigations, the UI Division

found 83 instances of misclassification, picking up a total of 596 misclassified workers and unpaid contributions of \$66,219.96. Penalties collected were \$80,950.00.

In the prior year, the Department of Labor made referrals to the Attorney General's Office of five employers that failed to cooperate with Department investigations into employee misclassification. The Attorney General's Office used the authority recently granted to it by the Vermont Legislature to help advance these investigations. In three cases, the Attorney General's Office succeeded in obtaining financial records and other documents needed to complete misclassification investigations, resulting in the Department of Labor finding the employers owed a total of approximately \$30,000 in past due contributions to the unemployment compensation fund and penalties for employee misclassification. These employers are also subject to a one-year ban on contracting with the State as a result of the misclassification findings. In the other two cases referred to the Attorney General's Office, the employers' continued failure to cooperate resulted in the Attorney General obtaining civil penalties in the amount of \$2,500 in each case.

The Attorney General's Office and the Department of Labor are committed to continuing to work together to ensure that employers support the State's vital Workers' Compensation Administration Fund and Unemployment Insurance Trust Fund, as required, and classify their workers as employees when appropriate. Any worker who believes they have been misclassified or business that believes a competitor is avoiding legal requirements to gain an unfair advantage in the marketplace should report potential violations to the Department of Labor so it may pursue enforcement or refer a matter to the Attorney General's Office.

Recommendations

The Attorney General's Office and the Department of Labor have consulted with the members of the Misclassification Task Force established by Act 85 (of 2020). The Task Force has no recommendations for additional policy reforms or enforcement powers at this time.

The Task Force recommends continuation of the joint enforcement mechanism established pursuant to the Act. Additionally, the Task Force proposes that it has served its purpose and that the legislative mandate for its operation be repealed in the interests of efficiency. The Task Force wishes to recognize that, at its inception, the joint enforcement mechanism was new and/or untested, and it acknowledges the importance of a body for providing an initial report, to meet periodically for discussion, and to consider the efficacy of joint enforcement efforts. However, in light of the Department of Labor's expertise and the Attorney General's Office's subsequent enforcement activity (where appropriate and called upon), it is the opinion of the Task Force that those agencies specifically are best suited to respond to future complaints, referrals, or investigations involving misclassification – or, to respond to or recommend future policies or proposals lawmakers may wish to consider, given their respective roles and expertise as enforcement agencies. Accordingly, we recommend that the statutory provisions relating to the Task Force itself be repealed.