

NEW COLORADO LAW REGARDING THE MISCLASSIFICATION OF EMPLOYEES

House Bill (HB) 09-1310, which became effective June 2, 2009, requires the Unemployment Insurance (UI) Program to accept complaints and conduct investigations, when appropriate, regarding alleged misclassification of employees as independent contractors. It also requires that the UI Program provide a written advisory opinion concerning the classification of a worker, when requested.

Complaint Process

Any person may file a written complaint alleging that an employer has misclassified an individual, who is performing work, as an independent contractor. If you wish to report an employer engaged in the misclassification of an employee(s), send an e-mail to UITA-CDLE@state.co.us or a letter to:

Colorado Department of Labor and Employment
Unemployment Insurance Tax Audits
PO Box 46538
Denver, CO 80201-6538

Be sure to include your name, address, telephone number, e-mail address, the employer's name and address, and a description of the job duties performed by the employee(s) being classified as an independent contractor.

Investigation and Results

After a complaint is received, the UI Program determines whether an investigation is needed. If it is, the appropriate parties are contacted. If an investigation finds that an employer has misclassified employees, the employer must pay all back taxes owed with interest. Additionally, if the investigation finds that the employees have been misclassified with willful disregard of the law, the employer may be fined up to \$5,000 per misclassified employee for the first misclassification and up to \$25,000 per misclassified employee for a second or subsequent misclassification. In addition, upon a second or subsequent misclassification, the employer is prohibited from contracting with, or receiving any funds from, the state of Colorado for up to two years.

Advisory Opinion

The law also allows an employer to request an advisory opinion. The opinion is available to employers seeking advice on proper classification of workers. If you would like to request an advisory opinion on whether you should classify individuals as employees or independent contractors, submit a written, signed request to:

Colorado Department of Labor and Employment
Unemployment Insurance Tax Audits
PO Box 46538
Denver, CO 80201-6538

You must include your name, company name, and a description of the job duties performed by the workers under consideration. To the extent you have the information, include answers to the following questions:

- Does the individual(s) have an independent trade, profession, or occupation? If so, what is that trade, profession, or occupation?
- How is the rate of pay determined? Is the individual paid a salary, hourly rate, fixed rate, contract rate, or by the completion of work?
- Does the individual(s) work exclusively for you?
- Do you oversee the actual work or instruct the individual as to how the work will be performed?
- Can you terminate the work the individual is performing at any time? If so, for what reasons?
- What training do you provide the individual(s)?
- What tools or benefits do you provide to the individual(s)?
- What materials and equipment do you provide to the individual(s)?

- What are the individual's work hours? How is the time he or she works determined?
- How is the individual(s) paid? If by check, who is the check made payable to?
- Is the individual(s) business a part of your business? Is it separate and distinct?