

Employee Misclassification



December 2, 2020

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
- Field Office Locations: Baton Rouge, Hammond, Lafayette, Lake Charles, & Monroe.
- 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.

COMPLIANCE MATTERS

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:
 - 2nd offense \$250 per misclassified worker
 - 3rd 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

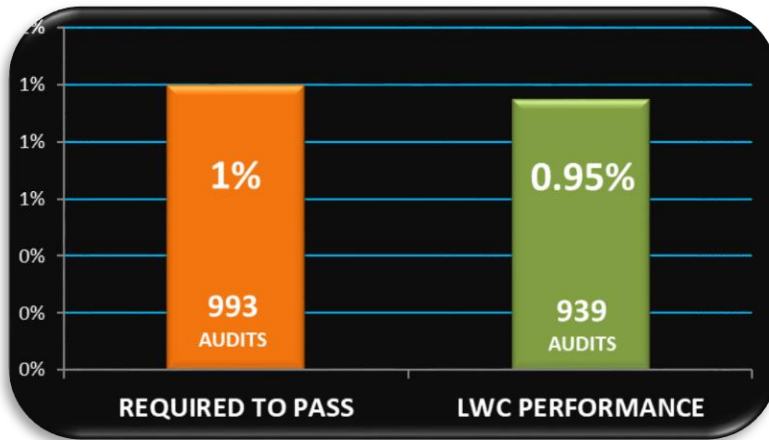
2019 EFFECTIVE AUDIT MEASURE

AUDIT 1% OF ALL CONTRIBUTORY EMPLOYERS

CHANGE 2% OF TOTAL WAGES AUDITED (ROLLING AMT)

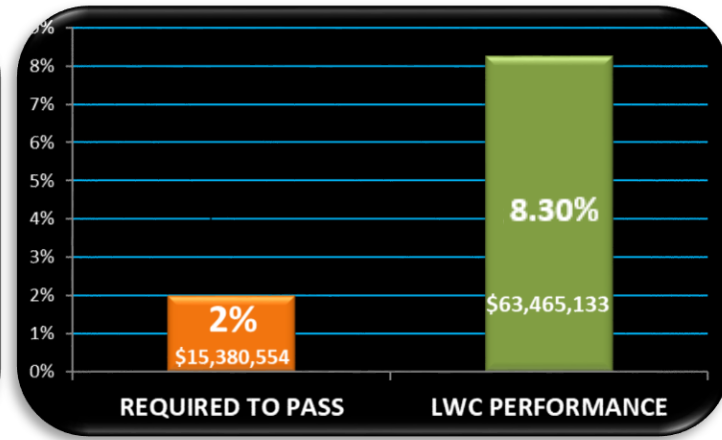
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1



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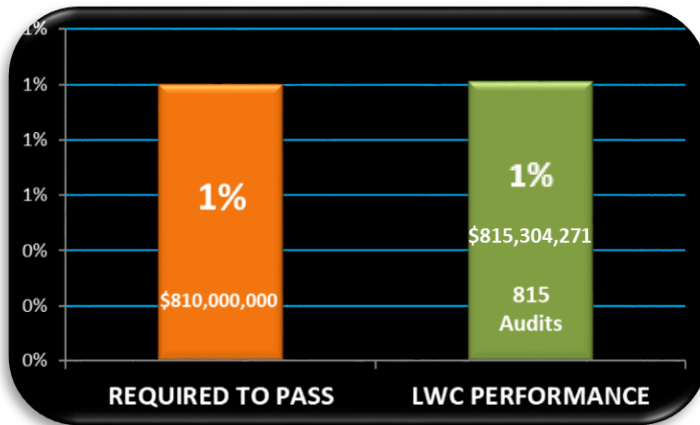


AUDIT 1% OF TOTAL WAGES REPORTED

DETECT AVERAGE OF 1 MISCLASSIFIED WORKER PER AUDIT

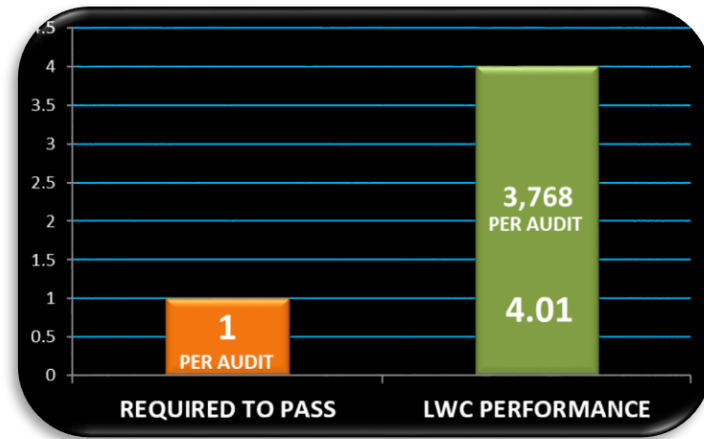
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QUESTIONS

