

Senate Resolution 22 Misclassification of Employees Task Force
Draft Report for Circulation and Comments to the Task Force Members & Public
For Discussion and Consideration at the March 24, 2021 Meeting

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FINAL REPORT OF THE MISCLASSIFICATION OF EMPLOYEES TASK FORCE

Preface

During the Second Extraordinary Session of 2020, the Louisiana Senate urged and requested the Louisiana Department of Revenue to work collaboratively with the Louisiana Workforce Commission to create the Misclassification of Employees Task Force (Task Force). The purpose was to study the issue of employee misclassification in Louisiana, the consequences to the state and its citizens, and to make recommendations for addressing this issue.

Senate Resolution No. 22 [See Appendix A] directed the Task Force to:

[R]eceive testimony from interested taxpayers, stakeholders, and organizations; review current initiatives of the administering state agencies responsible for collecting any tax or fee that may be diminished due to misclassification of employees; review measures enacted by other states to address misclassification of employees; review current state laws regulating the classification of employees and the related investigatory and enforcement tools of the administering state agencies; and consider any other items related to misclassification of employees.”

The resolution further charged the task force “to study and make recommendations for changes to state laws in an effort to provide the necessary investigatory and enforcement tools to detect, investigate, and minimize employee misclassification in Louisiana”.

The Task Force held its first public meeting on November 13, 2020, and met regularly through March 2021. Over the course of five months and twelve Zoom meetings, the Task Force heard informational presentations from organizations representing governmental agencies, business and industry, and other interested stakeholders. On March 24, 2021, the Task Force adopted the recommendations set forth in this report after consideration of public testimony and the proposals offered by the members.

The Task Force consists of thirteen members and was supported by staff of the Louisiana Department of Revenue. The members are as follows:

- Luke Morris, Assistant Secretary, Louisiana Department of Revenue, Chair of the Task Force
- Brandon Lagarde, Postlethwaite and Netterville, Vice-chair of the Task Force (appointed by the Society of Louisiana Certified Public Accountants)
- Danell Gerchow, Assistant Secretary, Louisiana Department of Revenue (designee for Kimberly L. Robinson, Secretary, Louisiana Department of Revenue)
- Ava Dejoie, Secretary, Louisiana Workforce Commission
- Robert Wooley, Assistant Secretary, Office of Unemployment Insurance Administration, Louisiana Workforce Commission
- Darrick Lee, Office of Worker’s Compensation Administration, Louisiana Workforce Commission (designee for Sheral Kellar)

- Thomas Cole , Temporary Louisiana Legislative Auditor, Successor to Daryl Pupera, Former Legislative Auditor
- Caroline Lafourcade, Gordon Arata Montgomery Barnett (appointed by Louisiana State Bar Association, Taxation Section)
- Dawn Starns, (appointed by National Federation of Independent Business)
- Martha Pennington (appointed by American Payroll Association)
- Tom Crowley (appointed by National Payroll Reporting Consortium)
- Jim Patterson (appointed by Louisiana Association of Business and Industry)
- Gary Warren (appointed by Louisiana AFL-CIO)

The information in the following five sections of this report is a compilation from the Task Force meeting minutes and organized by the type of information presented to and considered by the Task Force members.

CONSEQUENCES OF MISCLASSIFICATION

The misclassification of workers causes harm to the workers themselves, to other companies who properly classify their workers, and to federal and state revenues. Workers who are misclassified lose the protection of laws such as the Fair Labor Standards Act including minimum wage, overtime compensation and family and medical leave as well as unemployment insurance and workers compensation coverage.

Companies that classify their workers correctly are at a competitive disadvantage because of substantially higher labor costs resulting from proper payment of its employees, in addition to paying all required taxes and providing workers' compensation coverage.

Additionally, misclassification of workers results in the nonpayment of state and federal unemployment taxes, income taxes, and payroll taxes that employers are required to withhold or pay for employees but not independent contractors. According to studies by the federal government and other states, this misclassification causes substantial losses of revenue to the federal and state governments.

MISCLASSIFICATION IN LOUISIANA

Louisiana Legislative Auditor's Office – Gary Duty

Gary Duty, the lead auditor in the worker misclassification performance audit of the Louisiana Workforce Commission, presented the findings of the audit to the Task Force. Mr. Duty explained that this audit was a performance audit of the Louisiana Workforce Commission (LWC) and its processes to detect and prevent worker misclassification. Worker misclassification can be a significant issue, particularly considering the size of the potential impacts to state revenues and workers based on a loss of protections. According to the LLA's audit findings, between 2014 and 2018, the Louisiana Workforce Commission conducted 3,042 audits that identified employers that misclassified workers and failed to pay the state nearly \$3 million in unemployment taxes. Based on the wages associated with these unpaid unemployment taxes, the LLA estimated that the state potentially lost \$9 million in state income taxes. In addition, because misclassified workers typically do not have workers' compensation insurance, the state ultimately pays for their care if they are injured on the job. During fiscal year 2018, the Louisiana Department of Health's (LDH) Medicaid program paid more than \$1 billion for uncompensated care, which includes care for misclassified workers injured on the job.

The audit resulted in four main findings. The first two findings relate to LLA's recommendations of better ways to detect misclassification, and the last two relate to better ways to deter and prevent misclassification.

The LLA found that audits selected based on fraud tips/agency referrals and follow-up audits generated a relatively high number of worker misclassification incidents. In its report, LLA recommends (1) using industry classification data (i.e., NAICS codes) to target audits to employers within certain industries with known high levels of misclassification, (2) using publicly available data sets that may help LWC refine its audit selection such as, certified payroll data submitted by contractors and subcontractors to the Department of Transportation and Development in connection with state contracts. The LLA also noted in their findings that (3) LWC's enforcement process, especially the inability to impose a penalty for first-time offenses is not effective, and (4) contractors have no responsibility to ensure that workers provided by labor brokers are properly classified making it more difficult for LWC to deter misclassification.

A copy of the full report is available at:

<https://revenue.louisiana.gov/Miscellaneous/LWC%20Performance%20Audit%20-%20Detection%20and%20Prevention%20of%20Worker%20Misclassification.pdf>

PRESENTATIONS FROM OTHER STATES

A. Maryland

Representatives from the Maryland Department of Labor, James Tudor and Matt Helminiak, gave a presentation to the Task Force on Maryland's Workplace Fraud Act (WFA). Enacted in 2009 and amended in 2012, under Maryland's WFA, workers in the construction and landscaping industries are presumed to be employees of the person or business for whom they perform services, unless the employer can establish that the worker(s) are independent contractors or exempt persons. Employers may rebut and overcome the presumption of employee status by demonstrating one of four exceptions, which include the following: 1.) Exempt Person; 2.) Independent Contractor; 3.) Contractual Relationship with two Contractors; 4.) Documented Independent Contractor. Employers who are found to have misclassified workers have 45 days to pay restitution to misclassified workers and come into compliance by classifying the workers correctly, without additional civil penalties. In order to come into compliance, an employer may also be required to enter into agreements with governmental units including, but not limited to the Labor's Unemployment Insurance Division and the Maryland Comptroller to pay any amounts owed on the employees' wages for a period not to exceed 12 months preceding the citation. If an employer fails to prove that an individual meets one of these two exemptions the DLLR will begin imposing greater fines and penalties on companies. These fines and penalties will increase each time an employer fails to properly classify its employees. Employers who unknowingly misclassify employees may be subject to civil penalties of up to \$1,000 per improperly classified employee. Employers who knowingly misclassify employees can be subject to civil penalties of up to \$5,000 for each employee who is improperly classified for the first offense, penalties of up to \$10,000 per employee on the second offense, and penalties of up to \$20,000 per employee on the third offense. An employer may also be subject to an additional award of damages against it in an amount equal to three times the economic damages that a court finds due are to an employee. This is in addition to damages permitted under other Maryland labor statutes and the Fair Labor Standards Act.

A copy of the presentation is available at:

<https://revenue.louisiana.gov/Miscellaneous/Maryland%20Dept.%20of%20Labor%20-%20Worker%20Classification%20Presentation.pdf>

B. Montana

Representatives from the Montana Department of Labor and Industry, Tracy Gonzalez and Jeff Garden, provided a presentation to the Task Force on Montana's Independent Contractor Program. Under Montana law, there is a conclusive presumption that a holder of a current, valid independent contractor exemption certificate (ICEC), issued by the Department of

Labor and Industry, is an independent contractor (IC) if the person is working under the independent contractor exemption certificate. The holder of an ICEC waives the rights, benefits, and obligations of the state's workers' compensation law unless he or she has elected to be bound personally and individually by the provisions of a specified workers' compensation plan. To be "working under" an ICEC, the worker must be performing the type of work listed on the certificate and the hiring agent and the IC must not have a written or an oral agreement that the independent contractor's certificate holder's status is that of an employee. To obtain a ICEC, an applicant must swear to and acknowledge: 1.) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and 2.) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the Department. The Department may suspend or revoke an ICEC. When a certificate has been suspended or revoked, the IC and the hiring agent will be put on notice that the IC's status is no longer conclusively presumed. The hiring agent may then be responsible for workers' compensation coverage on that IC if the IC continues to work for him/her under a suspended or revoked ICEC. Fines of up to \$1000 per violation may be assessed against the hiring agent if: 1.) control is exerted to the extent it creates an employer/employee relationship, or 2.) the hiring agent requires an employee to adopt IC status to avoid their obligations to provide workers' compensation coverage. The same fines may be assessed against an IC for: 1.) performing work as an IC without first obtaining a certificate; 2.) performing work as an IC when the Department has revoked or denied a certificate; 3.) transferring to another person or allowing another person to use a certificate that was not issued to that person, or; 4.) misrepresenting the person's status as an IC.

Whether one is an independent contractor or an employee is a complex issue. The Independent Contractor Central Unit (ICCU) investigates working relationships and determines if the worker(s) are ICs or employees. Wage withholding, unemployment insurance, workers' compensation, human rights, and wage and hour issues are all decided using the same standards, and by one agency, the ICCU. Decisions made by ICCU are binding upon other agencies, so an employer will receive one decision from the state in a timely manner.

STAKEHOLDER PRESENTATIONS

A. Louisiana Workforce Commission – Dawn Bell and Darrick Lee

Misclassification is the practice of improperly labeling workers as independent contractors and that business is able to reduce labor costs by 30-40% by misclassifying workers. Misclassification impacts the employees' rights to minimum wage, overtime compensation, and family and medical leave. It also denies workers access to unemployment insurance and workers' compensation coverage. Misclassification impacts other businesses as well. Businesses who misclassify can increase their profits by 30-40%, putting those who properly classify at a competitive disadvantage. The impact on government includes the loss of Social Security contributions, federal and state unemployment tax and workers' compensation insurance.

LWC is governed by U.S. Department of Labor effective audit measures and is required to audit employers to ensure compliance with Employment Security laws. If the field audit group receives a tip or referral it is required to investigate. Employers who refuse to comply with an audit request, including the denial of access to records, are subject to a penalty of \$5,000.

LWC is member of the Government Against Misclassifying Employees Operational Network (GAME ON) initiative. GAME ON is a collaborative effort between LWC, the Department of Revenue, U.S. DOL Wage and Hour Division, the IRS and Louisiana State Police. GAME ON was formed for the purpose of identifying those companies who are misclassifying workers. Each state agency (Office of Workers Compensation, Office of Unemployment Insurance and Department of Revenue) each conduct their own internal reviews to identify audit leads. Those leads are shared with the other agencies and employers are selected for audit.

LA R.S. 23:1711(G) contains specific penalties for misclassification with respect to unemployment insurance. If misclassified workers are identified, the employer is given a written warning. If an employer continues to misclassify, he is subject to a penalty of \$250 per misclassified worker for a second offense and \$500 per misclassified worker for a third offense. Two or more offenses also subjects the employer to criminal penalties including a fine of up to \$1,000 and up to 90 days in prison.

The workers' compensation law also provides for civil and criminal penalties. These penalties are not specific to misclassification but apply to various types of misconduct by an employer regarding workers' compensation, including the failure to obtain workers'

compensation insurance, misclassification of workers, as well as misrepresentations of the type of work to avoid paying higher insurance rates.

A copy of the presentation is available at:

<https://revenue.louisiana.gov/Miscellaneous/Employee%20Misclassification%20Taskforce%20Presentation%2012022020.pdf>

B. Louisiana Department of Revenue – Shondra Cutno and Bryan Peters

Shondra Cutno provided a presentation of the Department of Revenue’s Field Audit Program. One objective of the field audit group is to recover withholding tax in cases where employers misclassify employees. LDR receives information from LWC regarding employers audited by that office who have acquiesced in the LWC’s employee classification findings. LDR uses that information to assess withholding tax against the employer for wages that have not been reported by the employee. The tax information confidentiality statute, LA R.S. 47:1508, prohibits the auditor from disclosing an employee’s filing information to the employer. A taxpayer who disagrees with the audit findings, can submit a formal protest to LDR and if not resolved can appeal to the Louisiana Board of Tax Appeals. LDR has completed 13 audits based on leads from LWC resulting in assessment of withholding tax totaling \$1,169,551.

Bryan Peters, Director of Business Tax Enforcement Division (BTE) provided information on the efforts of that division regarding withholding tax compliance. Mr. Peters explained that as part of their compliance efforts, BTE staff will randomly conduct on-site inspections of businesses. As part of the review, BTE staff determines whether the business is registered for Louisiana withholding tax. During the on-site inspections the owner(s), manager(s) and even the employees are questioned regarding the payroll practices including how employees are paid, how often, and how much they are paid. If the business is not registered for withholding, BTE will also begin the educational process of advising the business of the legal requirements and helping them determine whether workers are employees or independent contractors. The on-site visit is then followed-up with additional, written information regarding employer responsibilities including guidance on employee classification.

<https://revenue.louisiana.gov/Miscellaneous/LDR%20Misclassified%20Employee%20Audit%20Presentation.pdf>

C. Louisiana Association of Business and Industry - Mr. Jim Patterson

Jim Patterson gave a presentation on the business and industry perspective of misclassification efforts and suggestions for enforcement supported by the business and industry community. The presentation covered state comparisons of misclassification laws

in place, of which 26 states currently have. Of neighboring states, only three-Florida, North Carolina, and Texas-currently have misclassification statutes in place. Also covered were tests of the employee v. independent contractor status and the states, of which 35 use either the IRS test, the Common Law test or the ABC test. Another four have created a hybrid of their own. The business community believes definitions must be clear and consistent across agencies, compliance should be simple, and the emphasis must remain on helping and encouraging employers to comply. Also suggested was the establishment of a safe harbor provision relative to self-reporting and that penalties be reasonable but effective considering those already imposed. Mr. Patterson also emphasized the importance of accommodating the “gig economy” as well as the need to allow those using independent contractors to be allowed to continue to do so.

Task Force members representing business and industry also provided comments as it relates to their specific industries. Ideas discussed included consideration of a Voluntary Disclosure Agreement (VDA) option that may reduce penalties and interest that would be assessed, and having interagency agreements in place (IAT).

A copy of the presentation is available at:

<https://revenue.louisiana.gov/LawsAndPolicies/MisclassificationEmployeesTaskForceMaterials>

D. Louisiana AFL-CIO – Gary Warren

Mr. Warren’s presentation to the Task Force focused on tax fraud in the construction industry, specifically, the intentional misclassification of employees as independent contractors and the payment of unreported compensations. Mr. Warren presented the results of several studies regarding misclassification in the construction industry. Notable findings presented to the Task Force include a New York City study that found 25% of the construction workforce were misclassified or paid off the books, costing \$489.3 million in 2005, and \$557 million in 2008 in lost revenues. In 2013, a study in Texas determined that 41% of the workforce was misclassified or paid off the books costing the state 54.5 million in unpaid unemployment insurance contributions. In 2010 a Tennessee study found that 21% of the workforce was misclassified or paid off the books resulting in losses of \$221 million in unemployment insurance, workers compensation and federal taxes. Mr. Warren also discussed a national study of fraud in the construction industry, completed in 2020, which concluded that a yearly average of between 12.4 and 20.5 percent of construction workers,

or 1.3 to 2.16 million, were misclassified as 1099 independent subcontractors or paid off the books¹.

A copy of the presentation is available at:

<https://revenue.louisiana.gov/Miscellaneous/Louisiana%20AFL-CIO%20Presentation%202021.pdf>

E. Loyola Law Clinic Workplace Justice Project – Erika Zucker and Andrea Agee

The Workplace Justice Project (WJP) represents workers within two percent of the poverty threshold and agrees with business that there should be more consistency in how current laws are applied. There is a need for clear and consistent definitions and standards across agencies with regard to misclassification of employees. Ms. Zucker believes that education on compliance, and regular review and audit will drive compliance. The WJP also believes business/employers should be responsible for proper classification and workers should not be able to “choose” to disqualify themselves from the protections of employment. Just as definitions should be clear and consistent, penalties should be an effective deterrent to misclassification.

Ms. Agee added that there has been a rise in misclassification in staffing agencies and in the home healthcare industry. Affected workers include those earning low wages, with little bargaining power and no legal representation. The multiple tests to determine independent contractor status creates confusion. There is a competitive disadvantage for those businesses that follow the law. Enforcement often requires an attorney, which can be difficult for low-income workers to obtain. Ms. Zucker also referenced the Legislative Auditor report, which estimates the State of Louisiana lost up to \$9 million in income taxes and \$3 million in unemployment taxes through misclassification between 2014 and 2018. Misclassified workers who are injured on the job also cost significant amounts for healthcare services, and also suffer lost wages from unpaid overtime, reduced wage rates, and tax penalties. Ms. Zucker offered recommends clear policy standards, education and enforcement. This can include an increase in the number and frequency of audits; collaboration between agencies of one standard; and an increase in education across the board. Penalties can also include disqualification/disbarment from state contracting; presumption of employment for direct service workers and restitution to workers in addition to payment of taxes and state benefits. Remedies must serve as a deterrent and make workers whole.

¹ *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry*, by Russell Ormiston, Dale Belman and Mark Erlich (2020).

Ms. Agee added that the WJP receives cases often and are usually associated with overtime wages. Ms. Zucker would like restitution to be considered. While penalties can be assessed to employers, workers are often left out. It was suggested that agencies work together to look into this issue.

A copy of the presentation is available at:

<https://revenue.louisiana.gov/Miscellaneous/WJP%20Presentation%20to%20Misclassification%20Task%20Force.012821.pdf>

F. National Employment Law Project

PROPOSALS

A. Standard Definition of Employee and/or Independent Contractor

Proposal: Adopt a 12-factor definitional approach to independent contractor

Twelve factors will be identified in statute as criteria used to determine whether an individual qualifies as an independent contractor. Whenever an individual meets at least seven of the 12 factors, there shall be a rebuttable presumption of an independent contractor relationship with the contracting party for whom the independent contractor performs work. However, the failure to meet at least seven factors does not create any presumption, and this failure is not admissible to deny the existence of an independent contractor relationship. It is the intent of this proposal that any individual who qualifies as an independent contractor under current law would maintain that classification. The formal proposal is attached as **Exhibit __**.

Several concerns and suggestions were offered by members on the proposal of which include requiring that a worker meet 9 of the 12 factors to create a legal presumption and whether the existing presumption that a worker is an employee would remain. Also, noted was that the state's unemployment insurance program is subject to conformity requirements of the U.S. Department of Labor and that adoption of this definition could put federal funding at risk. Other concerns addressed were the proposed language stating that the failure to meet seven of the twelve factors would not create a presumption that the worker is an employee.

Proposal: Establish an Independent Contractor Exemption Certificate program

Individuals who wish to register as an independent contractor may do so by completing and submitting an electronic Application for Independent Contractor Exemption Certificate (ICEC). The ICEC would be an optional program and will not be required to establish independent contractor status. The application will be submitted to a single administering agency. The certificate must be renewed every two years.

Concerns notated were how to avoid an employer requiring its workers to complete the electronic form as part of its hiring process rather than the process working as intended, as a voluntary and conscience effort by an independent contractor. Other questions received were regarding whether the exemption certificate would extend to all work projects or work done by that individual or be limited to a specific trade/job. It was also suggested that upon renewal, the independent contractor be required to provide a list of contractors for whom services were provided during the prior certification period.

B. Revise Louisiana's Misclassification Penalty Structure

Proposal: Eliminate the first time warning under LA R.S. 12:1711(G) and increase the penalties for subsequent offenses

The penalty for the first violation would be \$500 and would be subject to a mandatory waiver if the employer becomes compliant within sixty days. The second violation would incur a \$500 penalty for the first ten employees, plus \$1,000 per employee for each additional employee after the first ten. This contemplates the smaller employers by limiting the first ten employees to \$500. Consideration of a tier effect which would cap the penalty at increasing amounts based on the number of misclassified employees is also a possibility. For the third and any subsequent violations, a fine of \$2,500 for each misclassified worker would be imposed, and the employer may be subject to imprisonment of not more than 90 days when it is determined there is a pattern or practice of misclassification. All penalties collected with regard to misclassification would be deposited in the state's unemployment compensation trust fund.

Confirmation that these specific penalties would be in addition to any late filing or similar compliance penalties imposed by the various agencies with respect to reporting and payments. Another area of expressed concern is relative to employers' ability to avoid subsequent offense penalties by reorganizing their business under a new name and it was suggested that the proposal provide for this.

C. Educational Outreach to Employers

Proposal: Develop an educational program for employers, employees and independent contractors

Develop a one-hour educational course to be made available to businesses when they register with the Secretary of State. The course would include an information as to the difference of employees and independent contractors and the penalties associated with misclassification. Employers who are found to have misclassified would also be required to complete the course and a related assessment to qualify for the waiver of penalty imposed for first-time offenses in Section B above. Additional courses on more specific topics such as withholding tax, unemployment tax, workers compensation insurance could also be developed as part of the program.

Members and public participants expressed agreement that an educational outreach program is important to provide employers and employees with guidance on proper classification and to increase compliance.

D. Safe Harbor Relief for Putative Employers During Audit

Proposal: A putative employer who meets three requirements will not be held liable for past withholding or unemployment taxes. To qualify, the employer must show (1) reporting consistency, (2) substantive consistency, and (3) reasonable basis for the classification. Reporting consistency requires that the employer timely filed all federal tax and information returns (Form 1099-MISC/1099-NEC). Relief is not available for any worker for whom a Form 1099 was not filed. Substantive consistency requires a showing that the employer (and

any predecessor) always treated the worker as an independent contractor and that all similarly situated workers were treated the same. The employer must show that it had a reasonable basis for treating the worker as an independent contractor such as, reliance on a court case or IRS ruling, reliance on legal advice or advice of an accountant, and/or the IRS previously audited the company for employment taxes and did not reclassify the workers. The formal proposal is attached as **Exhibit __**.

A suggestion offered was that the legislation expressly provide that relief would not be available for any worker from which income taxes were withheld, recognizing that this is implied by the substantive consistency requirement.

E. Fresh Start Proper Worker Classification Initiative

Proposal: Enact a “Fresh Start Proper Worker Classification Initiative” to provide taxpayers with an opportunity to voluntarily reclassify their workers as employees for future tax periods with no withholding or unemployment tax liability for the past nonemployee treatment. To participate, the taxpayer must meet certain eligibility requirements, apply to participate in the Fresh Start Proper Worker Classification Initiative, and enter into a joint closing agreement with the Department of Revenue and Louisiana Workforce Commission. To be eligible, a taxpayer must have consistently treated the workers as nonemployees, and must have filed all required Forms 1099-NECs with the Internal Revenue Service with respect to those workers, consistent with the nonemployee treatment, for the previous three years with respect to the workers to be reclassified. An eligible taxpayer who participates in the Fresh Start Proper Worker Classification Initiative agrees to prospectively treat the class or classes of workers identified in the application as employees for future tax periods and is not liable for any withholding tax, unemployment tax, interest or penalties with respect to any amounts paid any workers prior to the date on which the taxpayer is accepted for participation in the Fresh Start Proper Worker Classification Initiative. A copy of the formal proposal is attached as **Exhibit ____**.

Concern was expressed that allowing an employer to participate without consequence from previous noncompliance would reward bad behavior, particularly with regard to Workers Compensation Coverage. Possible solutions would be to require applicants to show proof of Workers Compensation coverage upon application and to statutorily preserve a worker’s right to file a claim as it concerns pre-application injuries. Clarification was offered that program has prospective application only.

F. Louisiana Voluntary Disclosure Program

Proposal: Enact a Louisiana Voluntary Disclosure Program (VDA) to establish an effective process of reporting undisclosed liabilities for withholding taxes administered by the Department of Revenue and unemployment taxes administered by the Louisiana Workforce

Commission that would have been due for workers who were not classified as employees. The proposed VDA would authorize taxpayers to anonymously enter into agreements and voluntarily pay such taxes with no penalty. Upon acceptance from the Department of Revenue, the applicant or applicant's representative must sign the agreement and return it to the secretary within 30 calendar days of the postmark or e-mail date, or within any extension of time authorized by the secretary beyond 30 calendar days from the postmark or e-mail date. After all tax and interest due for the look-back period, which includes the preceding 12 months from the application date, have been paid, any delinquent penalties assessed will be waived, unless the tax disclosed was collected but not remitted. The Act requires the Louisiana Department of Revenue and Louisiana Workforce Commission to establish such a program provided for, to define terms and conditions of the program, to provide for the disposition of the monies collected from the program, and to provide for an effective date. A copy of the formal proposal is attached as **Exhibit ___**.

Due to the technical and procedural nature of a VDA Program, the VDA rules may be established by administrative regulation under current statutory authority.

G. Informational Reporting by Employers

Proposal: Any service recipient who files or is required to file a Form 1099-NEC with the IRS for services performed in Louisiana must file a copy of such return with the Department of Revenue. The return copy must be filed with the secretary on or before the 28th day of February of each year for the preceding calendar year. This first filing is due February 28, 2022 for payments made in 2021. The secretary will have authority to grant extensions, not to exceed thirty days, to file the report and to waive the reporting requirement upon a showing that the requirement creates an undue hardship. A copy of the formal proposal is attached as **Exhibit ___**.

The Department of Revenue anticipates utilizing data analytic discovery procedures to identify potential cases of misclassification with this 1099 data. Concerns were expressed as to which 1099s would be required (based on employer and/or recipient address), the administrative burden to comply with information reporting by employers, and to what extent the same information is received by the Department in subsequent years. The Department intends to provide a demo on the 1099 submission process as already in place by other states at the final Task Force meeting.

RECOMMENDATIONS

<Recommendations to be adopted during public meeting only.>