Report to
The Vermont Legislature

Annual Worker Misclassification Report

in Accordance with Act 85 (2020)

Submitted to:	· **House Commerce and Economic Development Committee** · **House Ways and Means Committee** · **Senate Economic Development, Housing, and General Affairs Committee** · **Senate Finance Committee**
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The Vermont Attorney General's Office (AGO) submits this annual report pursuant to Act 85 (2020). Act 85 sought to broaden efforts to address complaints of "willful, substantial, or systemic" violations of Vermont's workers' compensation or unemployment insurance laws by employers who improperly (1) claim they are not covered by those laws or (2) misclassify their employees as workers not protected by those laws. Among other things, Act 85 granted the Vermont Department of Labor (VDOL) the authority to refer such misclassification cases to the AGO for enforcement. Act 85 also established a multi-agency Misclassification Task Force to enhance collaboration across agencies and facilitate joint AGO-VDOL enforcement.[1]

Additionally, Act 85 requires the Vermont Attorney General to report annually to the above legislative committees regarding enforcement activities and the benefits realized pursuant to the Act.

This annual report outlines the efforts over the past year to identify and investigate employers that may have misclassified employees and failed to pay contributions to Vermont's unemployment insurance trust fund, failed to maintain workers' compensation insurance for their employees, or both. The report also includes recommendations from the Misclassification Task Force for the continued operation of Act 85, including continued joint enforcement authority and sunsetting the Task Force in light of demonstrated enhancement of AGO-VDOL collaboration on enforcement.

I.   Enforcement Activity

Enforcement efforts during the 12 months reviewed (Q4 2023 – Q3 2024), including the following:

A. Workers' Compensation Misclassification Enforcement.

VDOL's Workers' Compensation Division investigates potential workers' compensation misclassification cases by a variety of means, including: (1) complaints from the public; (2) referrals from other agencies or VDOL units; and (3) VDOL review of Vermont workers' compensation-related data maintained by the National Council of Compensation Insurance (NCCI).

In the year reviewed, the Division:

- Opened 131 misclassification investigations, comprising:

    o   99 investigations from Division's review of over 4,000 NCCI reports.

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[1] The Task Force consists of representatives from the AGO, VDOL, the Agency of Administration, the Agency of Transportation, the Agency of Human Services, the Department of Financial Regulation, the Department of Taxes, and the Commission of Liquor and Lottery.

- 14 investigations from complaints received from the public;

- 13 investigations from referrals from other VDOL units;

- 1 investigation from the list of employers newly liable for unemployment insurance violations; and

- 4 investigations from other pending or closed VDOL investigations.

- Issued 35 citations, comprising:

  - 14 citations from previously pending investigations;

  - 20 citations from newly opened investigations; and

  - Assessments totaling $168,710.00.

B. Unemployment Insurance Misclassification Enforcement.

VDOL's Unemployment Insurance Division investigates potential violations of Vermont's unemployment insurance (UI) laws by misclassifying employees as non-covered workers. In the year reviewed, the Division:

- Completed 61 audits;

- Completed 306 investigations;

- Identified 49 separate instances of misclassification affecting 301 employees;

- Identified unpaid UI contributions in the amount of $25,332.83; and

- Assessed interest and penalties for violations in the amount of $44, 871.21

During this reporting year, VDOL did not refer any misclassification cases to the AGO for separate enforcement action. In prior years, such referrals required AGO efforts to obtain financial records and other documents needed to complete VDOL misclassification investigations. The AGO's 2024 Annual Misclassification Report details some of those efforts and their outcomes.

The AGO and VDOL remain committed to continuing their collaboration 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 business or individual believing that an employer or other business 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.

II.   Misclassification Task Force Recommendations

The AGO and VDOL have consulted with the members of the Act 85 Misclassification Task Force. The Task Force has no recommendations for additional policy reforms or enforcement powers at this time. Instead, it offers the following two recommendations:

1. **Continuing Joint Enforcement and Collaboration:** The Task Force recommends continuation of the joint enforcement mechanism established pursuant to Act 85. The Act opened new avenues for AGO-VDOL enforcement and collaboration that maximizes State resources to ensure broad protection of Vermont employees.

2. **Sunsetting Misclassification Task Force:** Additionally, the Task Force proposes that it has served its purpose and that the legislative mandate for its operation be repealed in the interest of efficiency. When Act 85 was enacted in 2020, its joint enforcement mechanism was new and/or untested. The Task Force served an important role in opening lines of communication between State agencies, developing appropriate joint enforcement protocols, and evaluating the outcomes of joint enforcement efforts.

   However, in light of the VDOL's expertise and the AGO's enforcement support (where appropriate and called upon), it is the opinion of the Task Force that those two agencies are best suited to respond to future complaints, referrals, or investigations involving misclassification. Similarly, they are best suited to respond to or recommend future policies or proposals lawmakers may wish to consider. For these reasons, the Task Force recommends repeal of the statutory provisions regarding its creation and operation.