In January of this year, we reported on a series of new laws that targeted the issue of misclassifying workers as independent contractors rather than employees. Worker misclassification costs New Jersey millions of dollars in lost taxes and contributions to the state’s unemployment and disability funds and curtailing this practice has been the focus of Governor Murphy’s administration. Misclassified employees are potentially deprived of benefits under New Jersey’s Unemployment Compensation Law; protections under state wage and hour law, including the right to minimum wage and overtime; and benefits under New Jersey’s Temporary Disability Benefits Law, Family Leave Insurance, and the Earned Sick Leave Law.

New Jersey Law Prohibits Worker Misclassification

One of these laws requires employers to post in their workplace a notice of the prohibition against misclassifying workers, the benefits and protections available to employees, and the remedies available to employees. Late last month, the New Jersey Department of Labor and Workforce Development (“DOL”) issued a form of this notice on its website. The poster is titled “New Jersey Law Prohibits Worker Misclassification – Notice of Employee Rights & Employer Responsibilities” and is available for download here.
Notice of Employee Rights & Employer Responsibilities

The poster defines what misclassification is and sets forth the test used to determine whether an individual is an employee or an independent contractor. The poster further explains that in addition to awards of a remedy that would make the misclassified employee and state agency whole, the DOL is empowered to impose penalties against offending employers of up to 5% of the gross wages earned over the past twelve months by the misclassified employee. This penalty is paid to the employee. In addition, the DOL may impose a penalty of up to $250 per misclassified employer for first violations and up to $1,000 per misclassified employee for each subsequent violation. The DOL instructs employees to “display this poster in a conspicuous place.” All New Jersey employers should post this new notice in the workplace area reserved for all of the other mandatory postings.

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