Legislation to Crack Down on Employee Misclassification

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NEWS FROM
State Senator George Onorato
Chairman, New York State Senate
Standing Committee on Labor

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CONTACT: Janet K. Kash (518)455-3486 kash@senate.state.ny.us

LEGISLATION TO CRACK DOWN ON EMPLOYEE MISCLASSIFICATION
APPROVED BY NEW YORK STATE SENATE LABOR COMMITTEE

Measure Seeks to Stop Employer Practice that Drives Hundreds of Millions
of Tax Dollars into New York's Underground Economy

State Senator **George Onorato** (D-Queens), the chairman of the Senate Standing Committee on Labor, today announced that the Committee has approved legislation (S.5847-A) he sponsors that seeks to crack down on the practice of employee misclassification and prevent the siphoning off of hundreds of millions of dollars in state tax revenue into New York's underground economy.

Noting that the Labor Committee held a public hearing on this issue on January 13th, Senator Onorato said, "It is very clear that action needs to be taken to stop unscrupulous employers from misclassifying workers as independent contractors – a practice that costs the state a great deal of money, and that hurts both workers and honest employers. With today's Senate Labor Committee passage of this legislation, we are one step closer to bringing an end to this practice. Particularly in light of these tough economic times, we cannot continue to turn a blind eye to a practice that robs our state of badly needed revenues."

The legislation approved today 15-0 by the Labor Committee would enact the "New York State Construction Industry Fair Play Act." Under this measure, all construction industry workers would be presumed to be employees unless they meet three specific criteria that would lead to their classification as independent contractors. This "ABC test" is used in several states throughout the country where employee misclassification has also diverted millions of dollars into their underground economies. The bill would also provide workers with notice of their classification status, protect them from retaliation for reporting violations, and impose penalties against employers and corporate officers who knowingly allow violations to occur. It is estimated that the measure could save New York State and New York City more than $300 million a year in collections of unemployment, income and payroll taxes, along with workers' compensation assessments.

In addition to Senator Onorato, the legislation is co-sponsored by **Senators Brian X. Foley, who is a co-prime sponsor, and Senators Neil D. Breslin, Hiram Monserrate, Diane J. Savino, and William T. Stachowski**.

"There is no question that employee misclassification is a serious and pervasive problem that has broad economic and human ramifications," said Senator Onorato, noting that the practice is particularly common in the construction industry. "Employers who knowingly

misclassify workers deprive their employees of basic labor protections, including access to unemployment insurance and workers' compensation. Misclassification also hurts honest employers who lose work to companies whose low bids are directly tied to employee misclassification fraud. And this practice ultimately hurts all of New York's taxpayers in terms of millions of dollars in lost state revenue." The Senator noted that employee misclassification is hurting upstate and downstate alike. At the January 13th hearing, the Senate Labor Committee heard testimony about misclassification in the North Country region of the state involving hotel, public school and residential and commercial housing construction projects.

The Queens lawmaker added that a report released this past summer by the New York State Joint Enforcement Task Force on Employee Misclassification found 12,300 instances of employee misclassification throughout the state, and more than $157 million in unreported wages. These violations, so far, have led to the recovery of $4.8 million in unpaid unemployment taxes, more than $1 million in unemployment insurance fraud penalties, more than $12 million in unpaid wages, and more than $1.1 million in workers' compensation fines and penalties. Most of the violations, statewide, were found in the construction industry.

In conclusion, Senator Onorato said, "The issue of employee misclassification needs to be addressed before the problem gets even worse. A failure to take action is tantamount to condoning tax evasion, encouraging dishonest employers to misclassify even more workers, and looking the other way while workers are being hurt and our state is being cheated of millions of dollars in needed revenue."

The legislation now goes to the Senate Codes Committee for consideration.

- 30 –