



NEW YORK STATE SENATOR

George Onorato

## Legislation to Crack Down on Employee Misclassification in the Construction Industry Approved by New York State Senate and Assembly

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### NEWS FROM

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### **LEGISLATION TO CRACK DOWN ON EMPLOYEE MISCLASSIFICATION IN THE CONSTRUCTION INDUSTRY APPROVED BY NEW YORK STATE SENATE AND ASSEMBLY**

**Measure Seeks to Stop Employer Practice that Drives Tens of Millions  
of Tax Dollars into New York's Underground Economy Each Year;  
Next Stop is Governor's Desk for Approval**

State Senator George Onorato (D-Queens), the chairman of the Senate Standing Committee on Labor, today announced that the State Senate and Assembly have given final approval to his legislation (S.5847-F/A.8237-D) that cracks down on the practice of employee

misclassification in the construction industry and will help to prevent the siphoning off of tens of millions of dollars in state tax revenue each year into New York's underground economy.

"It is very clear that action must be taken to stop unscrupulous employers from misclassifying workers as independent contractors – a practice that costs the State at least \$90 million a year, and that hurts both workers and honest employers," said Senator Onorato. "With the Senate and Assembly passage of this legislation, and with the Governor expected to sign it into law, we are just one pen stroke away from bringing an end to this unfortunate practice. Particularly in light of these tough economic times, we cannot continue to turn a blind eye to employer behavior that robs our state of badly needed revenues." When fully implemented, the legislation is expected to provide the State with up to \$92.3 million a year in savings from lost unemployment taxes and workers' compensation assessments.

The legislation approved by the Senate and Assembly 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.

In addition to Senator Onorato, the legislation is co-sponsored by Senator Brian X. Foley, who is a prime co-sponsor, and Senators Joseph Addabbo, Neil D. Breslin, Liz Krueger, William Larkin, Diane J. Savino, Eric Schneiderman, 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.”

"We must do all we can to put an end to unfair labor practices that hurt our workers and our state as a whole," said Senator Brian X. Foley (D - Blue Point). "Creating a clear and concrete litmus test for determining under what circumstances a construction worker is an independent contractor rather than an employee will make it easier to find and address those situations in which the employee has been misclassified by the employer in an effort to avoid having to provide adequate protections. It will also provide access to proper benefits, such as unemployment insurance and workers' compensation, to hundreds of construction workers who presently cannot access those benefits due to being misclassified as independent contractors. Correcting this issue will protect hardworking New Yorkers, as well as bring additional revenue to the state, both of which are important in these trying economic times."

Senator Onorato also pointed out that a 2009 report 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, at the time, 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, and now it appears that it will be. If we were not to take action, it would be 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 Governor David A. Paterson for his signature. The bill, approved by the Senate on June 25 and by the Assembly on June 29, is expected to win his approval.