

# VA Senate Approves Employee Misclassification Force

By Jessica Summers

In January, the Senate of Virginia passed a bill to establish an Employee Misclassification Task Force (see SB879 available here). The task force will be comprised of members of various government agencies and will be responsible for, among other things, developing and recommending a clear definition of “employee,” educating workers and employers about misclassification and how to report misclassification, and considering enforcement mechanisms.

After passing the Senate, the bill was referred to the Virginia House of Delegates, and as of the end of January, was being considered by the Committee on General Laws. Although the bill has yet to become law, employers who use independent contractors to supplement their work forces would be well advised to take this opportunity to conduct a self-audit of worker classifications.

The increased interest in addressing worker misclassification is not unique to Virginia. Many states have turned their attention to this issue and the loss of social security, Medicare, unemployment and income taxes that are often the result of misclassification. In 2009, Maryland granted similar responsibilities to a Workplace Fraud Task Force. Since its formation, the Maryland Task Force has established education and outreach programs and has created a Worker Misclassification Database to allow agencies to share information, track cases of misclassification and identify areas for audit.

As we have discussed in previous blog posts, the IRS may provide some relief for employers who voluntarily identify and remedy instances of misclassification. However, given the significant risks and costs associated with misclassification and reclassification, employers would be well advised to engage counsel to assist in any audit or remedial actions.

For more information about classifying workers and rectifying misclassification, Paley Rothman’s two-part webinar on independent contractors may be viewed for free on our website.