



Immigrant & Nonstandard Worker Project
Summary of Pending Legislation
Advocating for the Working Poor and the Unemployed

September 2005

Select Summary of State Legislation Affecting Non-Standard Workers 2005

The following is a select summary of recent state legislative activity affecting non-standard workers. Currently, this survey focuses on the following issues as they relate to non-standard workers: misclassification of workers as independent contractors, subcontracted and temporary workers, day laborers, and outsourced work. Generally, the synopses are provided by legislative tracking services. They have been supplemented where full text bills are available. NELP welcomes news from advocates on pending legislation; please forward it to cruckelshaus@nelp.org. This summary is beginning with new legislation and leading pending bills introduced or planned to be introduced in the legislative sessions in 2005. For earlier cumulative summaries, see NELP's website at <http://www.nelp.org/nwp/reform/index.cfm>

LAWS TO STUDY NONSTANDARD OR CONTINGENT WORK

MASSACHUSETTS

HB 3942 [Full Text of MA HB 3942](#)

Last Action: JANUARY 26, 2005; To Committee on LABOR and WORKFORCE DEVELOPMENT.

Synopsis: Develop information on labor markets, including nonstandard and unregulated workers via household survey. Information produced will be used to formulate a wide range of employment programs.

MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS

General overview: 2005 saw an upsurge in state legislation aimed at combating the misclassification of employees as independent contractors. In all, four states passed legislation, ranging from enhanced tax penalties for misclassifying employers (IL, NM) to establishing a study commission to gather information on the harms created by these practices (NH).

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Because of their status as non-employees, misclassified “independent contractors” miss out on: minimum wage and overtime requirements, workers’ compensation, unemployment insurance, the right to form a union and bargain collectively, and other workplace protections like the right to safe and healthy worksites and to be free from discrimination in employment. Misclassification as independent contractors long prevalent in low-wage sectors such as agriculture, delivery services, home care and day labor, is on the rise across the board. For more information on this employer practice, see **NELP Fact Sheet: [1099'd: Misclassification of Employees as Independent Contractors.](#)**

FLORIDA

HB 423 [Full Text of FL HB 423](#)

Last Action: MAY 26, 2005; APPROVED by GOVERNOR; filed as Chapter No. 2005-78.

Synopsis: Redefines “employee” under state workers’ compensation act to include owner-operators of motor vehicles, previously exempted as independent contractors.

ILLINOIS

HB 2137 [Full Text of IL HB 2137](#)

Last Action:

Synopsis: Creates the Truth in Employment Act. Requires a construction contractor to file statement with Department of Revenue each year and provides penalties for misclassification of construction employees as independent contractors.

KANSAS

HB 2372 [Full Text of KS HB 2372](#)

Last Action: February 10, 2005; to Committee on COMMERCE and LABOR

Synopsis: Provides for penalties for knowingly misclassifying an employee as an independent contractor for purposes of evading taxes. Specifies that departments of revenue, labor and the state attorney general are charged with enforcement.

NEW HAMPSHIRE

HB 246 [Full Text of NH HB 246](#)

Last Action: JUNE 17, 2005; Signed by GOVERNOR; Chapter No. 134.

Synopsis: Establishes a committee to study the classification of employees as independent contractors.

NEW JERSEY

AB 3339 [Full Text of NJ AB 3339](#)

Last Action: MARCH 7, 2005; In ASSEMBLY Committee on APPROPRIATIONS.

Synopsis: Requires persons transacting business in the state and making payments of remuneration for services to unregistered individuals and unincorporated businesses to withhold tax from those payments.

NEW MEXICO

HB 653 [Full Text of NM HB 653;](#)

Last Action: FEBRUARY 23, 2005; from HOUSE Committee on LABOR and HUMAN RESOURCES.

Synopsis: Provides for a presumption of employee and not independent contractor status for one performing labor or services for a fee.

NEW MEXICO

SB 657 [Full Text of NM SB 657](#)

Last Action: APRIL 4, 2005; Chaptered. Chapter No. 94

Synopsis: Creates a presumption of employee status for workers in the construction industry. Provides penalties for improperly reporting an employee as an independent contractor. Requires state Labor Department to administer and enforce the standards.

NEW YORK

SB 3282 [Full Text of NY SB 3282](#)

Last Action: AUGUST 30, 2005; VETEOED by GOVERNOR. Veto No. 84 of 2005.

Synopsis: Requires any person, corporation or other business entity contracting with the State to submit to the Commissioner of Labor a list of independent contractors hired by such person, corporation or other business entity; requires that a fee of \$10 per independent contractor be paid upon the submission of such list; provides that monies from such fees shall be used to fund the prevailing wage enforcement fund to prosecute violations of law.

NEW YORK

AB 3816 [Full Text of NY AB 3816](#)

Last Action: FEBRUARY 4, 2005; To ASSEMBLY Committee on LABOR.

Synopsis: Creates a right of action in favor of a contractor whose bid is denied against a winning bidder where the winner bidding knowingly classified employees as independent contractors to avoid paying workers' compensation premiums.

RHODE ISLAND

SB 633 [Full Text of RI SB 633](#)

Last Action: APRIL 6, 2005; To HOUSE Committee on LABOR.

Synopsis: Allows a contractor that loses a bid because a competitor misclassifies employees as independent contractors to bring an action for damages against the competitor.

TEXAS

HB 3191

[Full Text of TX HB 3191](#)

Last Action: House ECONOMIC DEVELOPMENT Committee report distributed.

Synopsis: Provides for administrative penalties for misclassifying employees as independent contractors. Committee reported that over 50% of audited employers misclassified employees as independent contractors.

TEMPORARY EMPLOYEES and TEMPORARY or LEASING AGENCIES including PROFESSIONAL EMPLOYER ORGANIZATIONS

General overview: Several states proposed bills recognizing and regulating professional employer organizations, or PEO's, which have emerged in increasing numbers across the country, offering payrolling and "employer of record" services to employers. Many of these bills purport to endow PEO's with the status of the sole employer for purposes of labor and employment protections, helping the PEO's to market their services to worksite or client employers, but creating barriers for workers who might have a claim against their worksite employers. The Iowa bill, below, specifies that PEO's are not always the "sole" employer. Some of these bills also put undue weight on written contracts signed by workers with the PEO, which traditionally do not carry weight in determining who is the employer for a particular employee.

ARIZONA

SB 1472

[Full Text of AZ SB 1472](#)

Last Action: APRIL 25, 2005; ENACTED; GOVERNOR signed; CH 212.

Synopsis: Provides for fees and regulates professional employer organizations.

IOWA

HSB 21

[Full Text of IA HSB 21](#)

Last Action: FEBRUARY 3, 2004; To HOUSE Committee on RULES.

Synopsis: License and regulation of PEO's, recognizes employment relationship can have more than one employer.

MASSACHUSETTS

SB 1101

[Full Text of MA SB 1101](#)

Last Action: JANUARY 26, 2005; To Committee on LABOR and WORKFORCE DEVELOPMENT.

Synopsis: Establishes a temporary worker's right to know of terms and conditions of employment; includes private right of action if state attorney general doesn't act.

MICHIGAN

SB 663 [Full Text of MI SB 663](#)

Last Action: JUNE 29, 2005; to SENATE Committee on ECONOMIC DEVELOPMENT, SMALL BUSINESS and REGULATORY REFORM.

Synopsis: Increases the small business tax credit for taxpayer whose business is to provide temporary staffing.

RHODE ISLAND

SB 628 [Full Text of RI SB 628](#)

Last Action: APRIL 6, 2005; In SENATE Committee on LABOR. Recommended further study.

Synopsis: Requires that licensed contractors provide a temporary employee the same benefits that are provided to a full-time employee.

WISCONSIN

SB 106 [Full Text of SB 106](#)

Last Action MARCH 8, 2005; to SENATE Committee on LABOR and ELECTION PROCESS

Synopsis: Limits amount that a temporary help service, employer-paid agent or employer may charge an employee for transportation.

DAY LABORERS

General overview: Two states (IL and NM) passed comprehensive state day labor bills regulating transportation fees, deductions, and check cashing. Florida passed a more limited bill regulating transportation fees and check cashing only. For more information on the day labor state legislation in IL and NM, see

ILLINOIS

HB 3471 [Full Text of IL HB 3471](#)

Last Action: AUGUST 9, 2005; Public Act No. 94-511.

Synopsis Amends the Day and Temporary Labor Services Act and the State Finance Act. Prohibits deductions for meals, equipment and transportation to cause worker's hourly wage to fall below the minimum wage. Provides protections for workers against labor service agencies; relates to abuse of labor and employment rights.

FLORIDA

HB 525 [Full Text of FL HB 525](#)

Last Action: MAY 6, 2005; Died in Committee of COMMERCE and CONSUMER AFFAIRS.

Synopsis: Limits amount day labor pool can provide for transportation. Authorizes day labor pools to provide day laborers with a method of obtaining cash from a cash dispensing machine and regulates such provision.

NEW MEXICO

HB 672 [Full Text of HB 672](#)

Synopsis: Requires labor brokers to provide a detailed wage statement to workers, explaining all deductions made from wages, and prohibits all deductions from wages, other than those required under state or federal law, that would reduce a day laborer's wages to less than minimum wage. Allows day labor agencies to charge for check-cashing, but only when the day laborer agrees after notice. Failure to pay a day laborer for work performed is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs and attorney fees and costs.

OUTSOURCING/ SUBCONTRACTED WORK

NORTH DAKOTA

HB 1377 [FULL TEXT OF ND HB 1377](#)

Last Action: JANUARY 13, 2005; In HOUSE Committee on GOVERNMENT and VETERAN AFFAIRS.

Synopsis: Relates to disclosure of whether work on state contracts will be performed within the U.S. and provides bidding preferences for work performed in U.S.

OREGON

SB 578 [FULL TEXT OF OR SB 578](#)

Last Action: AUGUST 5, 2005; In Committee on adjournment.;

Synopsis: Makes findings concerning international outsourcing of services contracted for by state agencies; requires contractors submitting such bids to specify where work will be performed; prohibits state agency from awarding contracts to contractor where work would be performed overseas.

OREGON

SB 135

[Full Text of SB 135](#)

Last Action: JULY 8, 2005; Chaptered. Chapter No. 340.

Synopsis: Requires farm labor contractors to submit certified payroll records to the Bureau of Labor & Industries for work done as a farm labor contractor when contractor pays workers directly.