Indiana Department of Labor

Report to the Legislative Council Indiana General Assembly on Employee Misclassification

October 31, 2010

Introduction

Indiana Code 22-2-15-5 (part of SEA 23) requires the Indiana Department of Labor to make recommendations to the legislative council concerning legislative changes needed to implement guidelines and procedures developed in the agency's report to the Pension Management Oversight Commission on Employee Misclassification. The law further requires a budgetary recommendation and a funding mechanism which was specified to include a fee. A copy of Indiana Code 22-2-15-1 to 6 can be accessed here.

The Department of Labor presented its report to the Pension Management Oversight Commission on September 29, 2010 in an open meeting. Thereafter, additional information was provided to the Commission at a subsequent public meeting held on October 13, 2010.

The Commission offered no additional recommendations to the Department of Labor at either meeting but did request additional information from the Department of Labor, as well as the Department of Workforce Development, Worker's Compensation Board and the Department of Revenue.

Recommendations on Legislative Changes

As the Department of Labor's initial report to the Commission states, the department recommended that the worker's compensation statutes be amended to address the issue of non-compliant employers who fail to obtain the mandated insurance coverage for its employees.

Because the Workers' Compensation Board is proscribed by statute in assessing penalties, it is recommended that its statutory authority be increased to include imposition of meaningful penalties for noncompliance. Legislative changes should be adopted that allow the Board to impose monetary fines for failure to have coverage before a worker is injured. This would allow the Board to proactively combat misclassification (among other issues) and enable it to use information received from other agencies. Without this change, the Board may only sanction an employer once an employee is injured. Additionally, commission of a second subsequent violation for failure to have coverage should subject the employer to enhanced penalties.

Ind. Code 22-3-4-13(a) limits the fine that can be imposed by the Board to Fifty Dollars against an employer who fails to timely send a written record of all injuries resulting in a lost work day or a fatality to its insurance carrier (or to the Board directly in the event of self insurance). It is suggested that Indiana law should authorize the Board to impose a more substantial penalty for failure to timely notify the Board of a covered workplace injury or illness.

The Department of Labor report concluded that no additional legislative action was needed to adopt the balance of the guidelines and procedures, which included primarily the signing of an

inter-agency memorandum of understanding, enhanced data sharing and additional education and outreach. No other statutory changes were recommended.

Budgetary Recommendation

Indiana Code 22-2-15-5 also requires a "budgetary recommendation for the implementation of the guidelines and procedures and a funding mechanism, to the extent possible, which must include a fee". None of the guidelines, procedures or recommendations (statutory or otherwise) made in the Indiana Department of Labor's first report require a funding mechanism.