

**State of New Hampshire
By His Excellency
John H. Lynch, Governor**

Executive Order 2010-3

**AN ORDER DIRECTING THE COORDINATION OF AGENCY ACTION
ON EMPLOYEE MISCLASSIFICATION
AND
ESTABLISHING A JOINT AGENCY TASK FORCE ON EMPLOYEE MISCLASSIFICATION
ENFORCEMENT**

WHEREAS, New Hampshire law provides that all workers are considered employees and requires their employers to comply with all labor, employment, tax, insurance and other regulatory requirements unless the workers demonstrate that they meet the criteria that allows them to be lawfully classified as an 'independent contractor';

WHEREAS, the health of the New Hampshire economy, its workers and its businesses is weakened when employers misclassify individuals they hire as independent contractors when those employees should legally be classified as employees;

WHEREAS, when an employee is misclassified as an independent contractor, the employer potentially violates a number of important legal obligations under federal and state labor, employment and tax laws;

WHEREAS, employee misclassification significantly harms New Hampshire workers who are deprived of their important legal rights and protections;

WHEREAS, employee misclassification is fundamentally unfair to the majority of New Hampshire job providers who abide by legal requirements on job classification but are placed at a competitive disadvantage compared to those who avoid their legal obligations;

WHEREAS, employee misclassification also harms New Hampshire taxpayers because employers who misclassify employees illegally avoid financial obligations to the State of New Hampshire; and

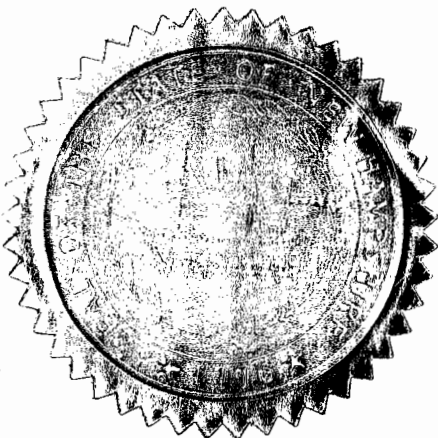
WHEREAS, the New Hampshire laws relating to employee misclassification would benefit from coordination of state agency action, and

WHEREAS, the Task Force to Study Employee Misclassification established by the Legislature in 2008 worked diligently over the past two years to examine and address the issue of employee misclassification and has acknowledged the benefit of a coordinated approach to address employee misclassification,

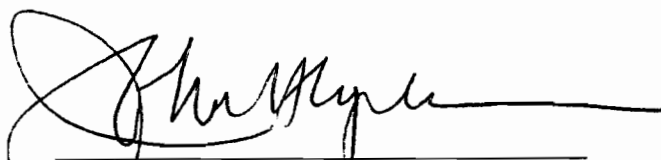
NOW, THEREFORE, I, JOHN H. LYNCH, GOVERNOR OF THE STATE OF NEW HAMPSHIRE, by virtue of the authority vested in me by Part II, Article 41 of the New Hampshire Constitution, do hereby order that:

1. State departments that presently investigate and enforce employee misclassification under their own statutory or administrative authority shall pool, focus and coordinate their resources under current law to identify, investigate and enforce cases of employee misclassification through joint agency teams, as appropriate, and develop strategies to eliminate employee misclassification.
2. The Department of Labor shall be the lead agency for the coordination of state agency efforts to identify and investigate employee misclassification. The Departments of Administrative Services, Employment Security, Insurance, Information Technology, Justice, Revenue Administration, Transportation and Environmental Services shall work with the Department of Labor in identifying, investigating and enforcing employee misclassification.
3. The Department of Labor shall coordinate state agency action to establish a system for the sharing of information of significant cases of suspected employee misclassification among appropriate state agencies and coordinate the development of protocols for joint investigation and enforcement of violations, either through state administrative action or through referral to appropriate local, state and federal law enforcement agencies.
4. There is also established a Joint Agency Task Force on Employee Misclassification Enforcement ('Task Force').
5. The Task Force shall consist of the following members, who shall be appointed by the Governor and shall serve at the pleasure of the Governor:
 - a. The Commissioner of Labor or designee
 - b. The Commissioner of Insurance or designee
 - c. The Commissioner of Employment Security or designee
 - d. The Commissioner of Revenue Administration or designee
 - e. The Commissioner of Administrative Services or designee
 - f. The Commissioner of Transportation or designee
 - g. The Commissioner of Environmental Services or designee
 - h. The Commissioner of Information Technology or designee
 - i. The Attorney General or designee.
6. The Governor shall select a chairman of the Task Force from among its members. The Task Force shall meet at the call of the chairman.
7. The Department of Labor shall serve as the lead agency in assisting the Task Force in its duties, providing staff assistance, research and preparation of reports.
8. The Task Force shall undertake and perform the following duties:
 - a. Examine and evaluate existing employee misclassification enforcement mechanisms in New Hampshire and other jurisdictions and make recommendations for more effective enforcement mechanisms. The Task Force should examine and evaluate existing employee misclassification enforcement mechanisms arising under minimum wage, employment security, workers disability, and tax laws.
 - b. Identify barriers to information sharing under current state law and recommend to the Governor proposed executive or legislative actions needed to overcome the barriers.

- c. Work cooperatively with business, labor, and community groups interested in reducing employee misclassification, including but not limited to both of the following:
 - (i) Seeking ways to prevent employee misclassification, such as through the dissemination of educational materials regarding the legal differences between independent contractors and employees.
 - (ii) Enhancing mechanisms for identifying and reporting instances of employee misclassification.
 - d. Increase public awareness of the illegal nature of and harms inflicted by employee misclassification.
 - e. Encourage businesses and individuals to identify possible violators through increased use of the Misclassification 'Tip-Sheet' website (www.nh.gov/nhworkers) that allows reporting of possible violations through a secure mechanism.
9. The Task Force shall issue a public report to the Governor on September 1 of each year, which shall detail the work of the Task Force, identify any administrative or legal barriers that might be impeding more effective enforcement of employee misclassification, make recommendations for legislative or regulatory measures to improve employee misclassification enforcement and identify successful preventative mechanisms for reducing employee misclassification. Copies of the annual report shall be provided to the Speaker of the House of Representatives, the President of the Senate, and the State Librarian.
10. All state agencies and departments shall make reasonable efforts to cooperate with the Task Force and to furnish such information and assistance as the Task Force reasonably deems necessary to accomplish its purposes.
11. The Task Force is authorized to receive monetary and other assistance in furtherance of its duties and functions upon the approval of the Governor and Council and in accordance with New Hampshire law. The Department of Labor is designated as the agency to bring forward any item on behalf of the Task Force for approval by the Governor and Council.
12. Nothing in this Executive Order shall be construed to require any action inconsistent with any applicable state or federal law.
13. This Executive Order shall continue in effect until amended, superseded or revoked by subsequent Executive Order.



Given under my hand and seal at the Executive
Chambers in Concord, this 3 day of September,
in the year of our Lord two thousand and ten.



Governor of New Hampshire