ANALYSIS OF PROPOSED UI LAW CHANGE
Worker Misclassification Penalties

1. Description of Proposed Change

Civil and criminal penalties were created, as part of the 2015-2016 UIAC Agreed Bill, for employers who intentionally misclassify their workers as independent contractors. The current penalties only apply to construction employers and are:

1. $500 civil penalty for each employee who is misclassified, but not to exceed $7,500 per incident.
2. $1,000 criminal fine for each employee who is misclassified, subject to a maximum fine of $25,000 for each violation, but only if the employer has previously been assessed a civil penalty for misclassified workers.
3. $1,000 civil penalty for each individual coerced to adopt independent contractor status, up to $10,000 per calendar year.

The civil penalties are deposited into the Department’s program integrity fund, which is used, in part, to fund the costs of staff who investigate employee classification.

The Joint Task Force on Payroll Fraud and Worker Misclassification recommended that the penalties for intentional worker misclassification be structured to deter repeat violations.1 The Governor’s Budget Bill (AB 68 / SB 111) proposes to amend the civil penalties statutes by having the penalties potentially apply to all employers. The Bill also eliminates the $7,500 and $10,000 caps on the civil penalties and doubles the penalties for subsequent violations. The Bill makes no changes to the criminal penalties.

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1 Joint Task Force on Payroll Fraud and Worker Misclassification 2020 Report, p. 10.
Worker Misclassification Penalties

2. Proposed Statutory Changes

108.221 (1) (a) of the statutes is renumbered 108.221 (1) (a) (intro.) and amended to read:

Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee shall, for each incident, be assessed a penalty by the department as follows:

1. For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $500 for each employee who is misclassified, but not to exceed $7,500 per incident.

Section 108.221 (1) (a) 2. of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $1,000 for each employee who is misclassified.

108.221 (2) of the statutes is renumbered 108.221 (2) (intro.) and amended to read:

Any employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing of buildings or other structures who, through coercion, requires an individual to adopt the status of a nonemployee shall be assessed a penalty by the department as follows:

(a) For each act occurring before the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $1,000 for each individual so coerced, but not to exceed $10,000 per calendar year.

Subject to revision to ensure cross-references are corrected.

2 Subject to revision to ensure cross-references are corrected.
D21-26  
Worker Misclassification Penalties

Section 108.221 (2) (b) of the statutes is created to read:

For each act occurring after the date of the first determination of a violation of this subsection, the employer shall be assessed a penalty in the amount of $2,000 for each individual so coerced.

3. **Effects of Proposed Change**

   a. **Policy:** The proposed change will permit the Department to assess civil penalties against any employer that intentionally misclassifies workers as independent contractors and will increase the amount of the penalties for subsequent violations.

   b. **Administrative:** This proposal will require training of Department staff.

   c. **Fiscal:** A fiscal estimate is not yet available.

4. **State and Federal Issues**

   There are no known federal conformity issues with this proposal. All changes to the unemployment insurance law should be sent to the U.S. Department of Labor for conformity review.

5. **Proposed Effective/Applicability Date**

   This proposal would be effective for employees misclassified after the law change is enacted.
Worker Misclassification Penalties

Date: 05/05/2021
Prepared by: Technical Services Section

FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Summary of Proposal:
Current law requires DWD to assess an administrative penalty against an employer engaged in construction projects or in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information to DWD for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee under the UI law. The penalty under current law is $500 for each employee who is misclassified, not to exceed $7,500 per incident. Current law additionally requires DWD to assess an administrative penalty against such an employer who, through coercion, requires an individual to adopt the status of a nonemployee in the amount of $1,000 for each individual so coerced, but not to exceed $10,000 per calendar year. Penalties are deposited in the unemployment program integrity fund.

The proposal removes the $7,500 and $10,000 limitations on these penalties and provides that the penalties double for each act occurring after the date of the first determination of a violation. The proposal also removes the limitations on the types of employers to which the penalties apply, allowing them to be assessed against any type of employer that violates the above prohibitions.

UI Trust Fund Impact:
This proposal is expected to have a positive but indeterminate impact on the Trust Fund because of the incentive for employers to correctly register as an employer and correctly list employees to avoid penalties.

IT and Administrative Impact:
Ongoing administrative impact to the UI program is indeterminate.