2019 Annual Report for the Employee Classification Section Pursuant to N.C. Gen. Stat. § 143-788(b)

NORTH CAROLINA
INDUSTRIAL COMMISSION

EMPLOYEE CLASSIFICATION SECTION

About the Employee Classification Section

Employee misclassification is defined in N.C. Gen. Stat. § 143-786(5) as avoiding tax liabilities and other obligations imposed by Chapters 95, 96, 97, 105, or 143 of the North Carolina General Statues by misclassifying an employee as an independent contractor. Pursuant to Session Law 2017-203, the Employee Classification Section was established within the Industrial Commission under the Employee Fair Classification Act. The Employee Classification Section's statutory mandate includes, among other duties, receiving and investigating reports of employee misclassification; coordinating with and assisting all relevant State agencies in recovering any back taxes, wages, benefits, penalties, or other monies owed as a result of an employer engaging in employee misclassification; coordinating with relevant State agencies and district attorneys' offices in the prosecution of employers and individuals who fail to pay civil assessments or penalties assessed as a result of the employer's or individual's involvement in employee misclassification; and providing all relevant information pertaining to each instance of reported employee misclassification to the North Carolina Department of Labor, North Carolina Division of Employment Security, North Carolina Department of Revenue, and North Carolina Industrial Commission to facilitate investigation of potential violations of Chapters 95, 96, 97, 105, or 143 of the North Carolina General Statutes.

The Employee Classification Section collaborates with the Compliance Division of the Industrial Commission and with other state agencies and uses the Employee Classification Application (ECA) to identify and investigate potential employee misclassification. The ECA was developed in collaboration with SAS, Inc., the Government Data Analytics Center (GDAC), and other state agencies.

Employee Classification Section Statistics

In Fiscal Year 2018-19, a total of 5,186 employee misclassification reports/alerts came through the Employee Classification Application.

The North Carolina Department of Labor shared information from 121 of their investigations involving suspected employee misclassification to be entered into the ECA by the Employee Classification Section. Additionally, the North Carolina Department of Labor Wage and Hour Bureau referred 8 callers to the Employee Classification Section, and the North Carolina Department of Labor Occupational Safety and Health Division referred 4 callers to the Employee Classification Section.

The Employee Classification Section shared 2,075 of the reports/alerts that came through the Employee Classification Application with the Compliance Division of the Industrial Commission or with the North Carolina Division of Employment Security. (1,259 reports/alerts were shared with the Industrial Commission's Compliance Division and 816 reports/alerts were shared by the with the North Carolina Division of Employment Security).

Of the 1,259 reports/alerts shared with the Compliance Division and investigated by the Compliance Division, the Compliance Division found 465 employers to be subject to the Workers' Compensation Act and non-insured. These non-insured employers were referred by the Compliance Division to the Commission's Deputy Commissioner Section for consideration of a penalty assessment.

A total of $8,630,661 in penalty assessments was made initially by the Industrial Commission against non-insured employers based upon referrals from the Employee Classification Section. After alternative penalties were calculated under N.C. Gen. Stat. § 97-94(b2), the amount assessed was reduced by $1,737,435, thus resulting in a modified assessed amount of $6,893,226 in penalties for FY

2018-19 based upon referrals from the Employee Classification Section. A total of $1,040,256[1] in penalty collections was made by the Industrial Commission from non-insured employers in FY 2018-19, based upon referrals from the Employee Classification Section.

North Carolina Division of Employment Security Statistics Related to Employee Misclassification

As a result of audits performed by the North Carolina Division of Employment Security, 9,615 workers were found by the Division of Employment Security to be misclassified from the third quarter of 2018 through the second quarter of 2019. This resulted in $1,405,273 in taxes assessed by the Division of Employment Security.

North Carolina Department of Labor Statistics Related to Employee Misclassification

As a result of investigations performed by the North Carolina Department of Labor, $37,572 in wages were found to be due to employees who were found by the Department of Labor to be misclassified, $37,480 in wages were paid to employees who were found by the Department of Labor to be misclassified, $11,029 in penalties were assessed by the Department of Labor in these cases, and $5,774 in penalties were collected by the Department of Labor in these cases.

North Carolina Department of Revenue Statistics Related to Employee Misclassification

The North Carolina Department of Revenue currently does not have initiatives that are specifically designed to identify cases of employee misclassification. However, the Department of Revenue's Schedule C Initiative and 4% ITIN Withholding Initiative potentially may identify employers who are misclassifying workers as independent contractors when the workers are, in fact, employees. The Department of Revenue may attempt to reclassify the workers, depending on the facts of the case. The Schedule C Initiative performs audits of taxpayers who have overstated expenses or understated income based upon their Federal Schedule C. The 4% ITIN Withholding Initiative is designed to identify and audit any taxpayer who has made payment to an ITIN holder under a 1099-Misc but fails to withhold 4% income tax. There is no data available at this time to determine how many, if any, of the assessments and collections made by the Department of Revenue in Fiscal Year 2018-19 were related to cases involving employee misclassification.

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[1] This amount is included in the Compliance Division's total penalties collected for FY 2018-19.