

Annual Report

EMPLOYEE CLASSIFICATION SECTION

Fiscal Year 2018
(JULY 1, 2017 - JUNE 30, 2018)



Industrial Commission

ANNUAL REPORT

EMPLOYEE CLASSIFICATION SECTION

Mission Statement

The Employee Classification Section is charged with identifying businesses which classify workers as independent contractors to avoid the payment of unemployment insurance and workers' compensation insurance and/or shift the burden of paying taxes to workers. This section collaborates with multiple state agencies who conduct independent investigations to determine if there have been violations of the agency's operational statutes.

About the Employee Classification Section

The Employee Classification Section had many of its preexisting initiatives codified in the enactment of Senate Bill 407 entitled the Employee Fair Classification Act. The Section had been operating under Executive Order #83, signed by Governor Pat McCrory in December 2016.

The new legislation enhanced the work of the Employee Classification Section by: 1) requiring all occupational licensing boards and commissions in the state have a public notice statement included within all applications and renewal applications stating they have not been investigated for worker misclassification as defined by Senate Bill 407; and 2) requiring the NC Department of Labor to place information on the NC Employee Classification Section in all businesses throughout the state that are subject to the provisions of Senate Bill 407.

The Employee Misclassification Application developed in collaboration with SAS, the Government Data Analytics Center (GDAC), and other state agencies resulting in a software system to proactively generate misclassification alerts and efficiently share information amongst state agencies has been significant in creating timely leads on possible violations of state agency laws pertaining to worker misclassification. During this past fiscal year, there has been continuous tuning of the Employee Classification Application (ECA) analytics and workflow processes to increase greater efficiencies in communication and reduction of workflow times amongst state agencies.

During the Fiscal Year, in collaboration with North Carolina Central University School of Law's Virtual Justice Project, the Section performed targeted educational outreach to utilize technology to contact all 100 counties across the state. The Director utilized the technology of the Virtual Justice Center and recorded an informational session on Employee Classification which was then shared with County Planning Departments across the state.

Furthermore, the Employee Classification Section presented information to approximately 50 Division of Employment Security Auditors on the process of Employee Classification and how the auditors further the mission of the Employee Classification Section. Finally, the Employee Classification Section presented information to the NC Department of Labor's Occupational Safety and Hazard Advisory Council Meeting.

North Carolina Employee Classification Statistics FY 2017-18

North Carolina Industrial Commission¹

Number of Complaints Received (Excluding NC DES)	328
North Carolina Industrial Commission Penalty Assessments ²	\$4,513,024
North Carolina Industrial Commission Collections	\$611,742 ³
North Carolina Industrial Commission Adjustments	\$576,051

United States Department of Labor - Wage and Hour Division⁴

Complaints Received	13
Number of Workers found to be Misclassified	211
Amount of Back Wages Assessed to Base upon Complaints Received	\$273,878

NC Division of Employment Security⁵

Complaints Received	2,077
Number of Workers found to be Misclassified	8,119
Tax Indebtedness Assessed for Misclassified Workers	\$1,702,138
Wages on which Unemployment Tax has not been paid	\$65,575,540

NC Department of Labor

Division Investigations (Wage and Hour & Occupational Safety Health)	44
Gross Wages Due	\$28,750
Wages Paid	\$5,320
Penalties Due	\$5,673
Penalties Paid	\$3,532

NC Department of Revenue

The North Carolina Department of Revenue mitigates the loss of individual income tax due to the possible misclassification of workers through four distinct initiatives. Each of the below listed initiatives of the North Carolina Department of Revenue are a part of the department's focus to curtail worker misclassification.

¹ This represents complaints referred from the Employee Classification Section to the Compliance and Fraud Investigation Section.

² Assessments in the amount of \$3,325,231 are currently pending and/or in litigation within the North Carolina Industrial Commission.

³ This amount is included in the total amount of penalties collected by the Compliance and Fraud Investigation Section.

⁴ US Department of Labor Wage and Hour Division is responsible for the enforcement of the Fair Labor Standards Act (2009) which ensures overtime payment, tip credit child labor and nursing mothers protections.

⁵ The unemployment insurance rate for businesses range from 0.06% to 5.76%.

This fiscal year marks the initial report of the North Carolina Department of Revenue to the NC Employee Classification Section which includes all initiatives with the number of audit cases, assessments and amounts collected for each initiative:

1. The Information Return Master File (IRMF) utilizes data from the Internal Revenue Service to identify taxpayers which have failed to file an individual income tax return for Federal or State tax purposes. The case and assessment information in the table below only includes taxpayers who have either received income from a 1099-Misc, non-employee compensation form and have failed to file income tax returns.
2. The Schedule C Initiative performs audits of taxpayers who have overstated expenses or understated income based upon their federal Schedule C.
3. ITIN Initiative focuses on taxpayers that request an inflated refund amount. The NC Department of Revenue requires the taxpayer to provide additional documentation to determine the accuracy of tax liability or refund.
4. 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% percent income tax.

COLLECTION DATA FROM NC DOR FY 2017-18

Compliance Initiatives	Number of Audit Cases	Assessments	Collections
IRMF Non-filer (1099-Misc) Initiative	15,589	\$33,838,805	\$17,754,744
Schedule C Initiative	2582	\$11,462,094	\$2,870,585
ITIN Initiative	6243	\$8,796,751	\$6,432,057
4% ITIN Withholding Initiative	151	\$3,815,303	\$1,478,490
Totals	24,565	\$57,912,953	\$28,535,876