

STATE AUDITOR DOUG HOFFER

PRESS RELEASE

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Much Work Remains in Efforts to Detect and Prevent Worker Misclassification

Vermont State Auditor Doug Hoffer today released the findings of an audit concerning worker misclassification. The audit report identifies deficiencies in program management at the Department of Labor (VDOL) and details the actions needed to better detect and prevent misclassification.

Worker misclassification occurs when an employer improperly classifies an employee as an independent contractor, enabling that employer to avoid workers' compensation premiums and unemployment insurance taxes. This creates an unfair business advantage and denies workers protections and benefits to which they are entitled.

In recent years, the Vermont General Assembly responded to persistent reports of worker misclassification by: 1) increasing the amounts and types of penalties against employers for misclassifying workers, 2) creating requirements for state contractors aimed at minimizing misclassification of workers, and 3) increasing resources to investigate worker misclassification. Additionally, Governor Shumlin signed an executive order in 2012 that created a task force aimed at combating worker misclassification.

Due to the importance of the topic, the SAO decided to conduct an audit that 1) assessed actions taken by the VDOL to detect and address worker misclassification and 2) evaluated whether the Agency of Transportation (AOT) and the Department of Buildings and General Services (BGS) have implemented procedures designed to minimize misclassification by state contractors.

While VDOL has taken steps to address this issue, it has failed to effectively implement numerous measures. The department was charged with leading the Governor's task force, but it did not convene meetings from June 2013 to July 2015, and critical work remains unfinished. VDOL has also failed to enforce unemployment insurance penalties for worker misclassification, which have been required by statute since 2010. VDOL's unemployment insurance division lacks reliable performance data for its field audit program, and the system for recording workers' compensation

case data has limited functionality. Furthermore, records show that 30 investigations started in 2011 have not been completed, and 134 cases that are listed as active are assigned to investigators no longer employed by the department.

The SAO always allows management of the auditee to review draft reports for factual errors and to comment on findings and recommendations. In this case, VDOL made assertions that challenged the veracity of the SAO's work, and those assertions are addressed in Appendix VI of the report. Where warranted, and as has been done before, the SAO made several minor corrections to the report. But some of VDOL's assertions were unfounded.

“An important part of our mission is to help improve the effectiveness of state government,” Auditor Hoffer said. “That can only occur if management acknowledges the problems identified by our auditors and works to correct the deficiencies. Given the importance of this issue for protecting Vermont workers and employers, we strongly encourage VDOL and the other agencies to take immediate action on the recommendations in this report.”

The SAO also found that although BGS and AOT developed procedures intended to meet statutorily required contracting procedures, issues remain. Neither entity consistently applied the procedures they developed, nor did they validate information reported by contractors.

“Though the Legislature and the Governor wisely determined the State should do more to ensure we don't contract with entities misclassifying workers, BGS and AOT have not adequately fulfilled their responsibilities,” Auditor Hoffer said. “They risk contracting with businesses that violate state employment laws, and this leaves open the window for workers on state projects to be without the coverage they are entitled to by law.”

In the report, the auditors make more than two dozen recommendations to improve the State's ability to detect and reduce worker misclassification. To read the full report, [click here](#).

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